



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** CSP 01-00-004

**EFFECTIVE DATE:** 9/22/2015

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**SUBJECT:** State Plan Policies and Procedures Manual

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**SUBJECT:** State Plan Policies and Procedures Manual

## ABSTRACT

**Purpose:** This instruction cancels and replaces Occupational Safety and Health Administration (OSHA) Instruction CSP 01-00-002 (STP 2.0-22B), sets out instructions for State Plans in developing Strategic Plans and Annual Performance Plans, and implements revisions to the State Plan monitoring system.

**Scope:** This instruction applies OSHA-wide.

**References:** PL 91-596, the Occupational Safety and Health Act of 1970; CSP 02-00-002, Consultation Policy and Procedures Manual, January 18, 2008; 29 CFR Parts 1902, 1908, and 1952-1956; CPL 02-03-003, Whistleblower Investigation Manual, September 20, 2011.

**Cancellations:** OSHA Instruction CSP 01-00-002 (STP 2.0-22B), dated March 21, 2001, and subsequent changes are cancelled by this instruction.

**State Plan Impact:** This instruction discusses parts of 29 CFR to which State Plans must adhere. Additionally, this instruction provides policy guidance to OSHA personnel regarding their role in the creation, oversight, support, and withdrawal of OSHA State Plans. The implementation of this policy guidance will affect the interactions between OSHA and State Plans. No State Plan response to this instruction is necessary.

**Action Offices:** National, Regional, and Area Offices involved in State Plan monitoring and liaison, and State Plans.

**Originating Office:** Directorate of Cooperative and State Programs

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## Major Changes

This manual cancels OSHA Instruction CSP 01-00-002 (STP 2.0-22B), dated March 21, 2001, and subsequent changes. The revised State Plan Policies and Procedures Manual lays out the overall policy framework for the development, monitoring, and evaluation of State Plans. Chapters 3 and 4 of the manual have been incorporated to cover State Plan approval and other policy issues and procedures that currently are contained in separate OSHA regulations, directives, and other documents. The major changes in the current document are:

- [Chapter 3](#): State Plan Establishment and Approval. This chapter was previously held for reserve; this chapter is intended to serve as a reference to the general criteria for OSHA approval of a State Plan.
- [Chapter 4](#): State Plan Changes. This chapter was also previously held for reserve; this chapter provides guidance for the adoption, submission, and approval of State Plan standards and other State Plan Changes.
- [Chapter 5](#): Mandated Activities – Grant Application. This was previously Chapter 8. This chapter was revised to include all information regarding the submission of the annual grant application, as well as strategic and annual performance goals.
- [Chapter 6](#): Tools for Federal Oversight and Quarterly Monitoring. This was previously Chapters 7, 8, and 10. These three chapters have been combined to create the new Chapter 6.
- [Chapter 7](#): Federal Annual Monitoring Evaluation (FAME) and Annual Reports. This was previously Chapter 9. The most significant change in this chapter is the establishment of a two-year FAME cycle with a new table covering the FAME process timetable. This chapter also includes a new introduction section, a new section on evaluating mandated activities, a new annual report format (to include a Corrective Action Plan), and a new State OSHA Annual Report template.
- [Chapter 8](#): Modifying and Withdrawing State Plan Approval. This is a new chapter which provides specific instructions for modifying and withdrawing State Plan approval.
- [Chapter 9](#): Complaints About State Program Administration (CASPA). The CASPA process is now addressed in Chapter 9, rather than Chapter 11, and Chapter 10 has been deleted.

## Executive Summary

This manual cancels and replaces OSHA Instruction CSP 01-00-002 (STP 2.0-22B). It lays out the overall policy framework for administering, monitoring, evaluating, and funding State Plans. This manual operationalizes the policy of partnership between OSHA and the State Plans. The new procedures place primary emphasis on achieving significant program results through a common approach of strategic planning and making progress toward strategic and annual goals. This approach allows State Plans to customize their programs to state-specific priorities and conditions. It also refocuses OSHA's monitoring in a way that supports State Plan efforts toward positive program impact and performance improvement.

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### Acronyms

ALAE - At Least As Effective
ALJ – Administrative Law Judge
AO – OSHA Area Office
ASP – Office of the Assistant Secretary of Policy
ATS - Automated Tracking System
BLS – Bureau of Labor Statistics
CAP – Corrective Action Plan
CAPR - Consultation Annual Project Report
CASPA - Complaint About State Plan Administration
CCU – Correspondence Control Unit
CFR – Code of Federal Regulations
CSHO – Compliance Safety and Health Officer
DAP – Directorate of Administrative Programs
DAS – Deputy Assistant Secretary
DCSP - Directorate of Cooperative and State Programs
DEP – Directorate of Enforcement Programs
DOC – Directorate of Construction
DSG – Directorate of Standards and Guidance
FAME - Federal Annual Monitoring and Evaluation Report
FPC – Federal Program Change
FRN – Federal Register Notice
GPRA – Government Performance and Results Act of 1993
IMIS – Integrated Management Information System
MARC - Mandated Activity Reports for Consultation
NAICS - North American Industrial Classification System
NPRM – Notice of Proposed Rulemaking
NRTLs – Nationally Recognized Testing Laboratories
NO - OSHA National Office
OAS – Office of the Assistant Secretary
OIG – Office of the Inspector General
OIS – OSHA Information System
OSA – Operational Status Agreement
OSH Act – Occupational Safety and Health Act
OSHSPA - Occupational Safety and Health State Plan Association
OSP – Office of State Programs
PMR - Performance Measurement Reports
RA – Regional Administrator
RACER - Regional Annual Consultation Evaluation Report
RO - OSHA Regional Office
SAMM - State Activity Mandated Measures
SIC - State Initiated Change
SIEP - State Internal Evaluation Program
SIR - State Information Report

SOAR - State OSHA Annual Report
SOL – Office of the Solicitor

## Chapter 1 Introduction

- I. **Purpose.** This instruction cancels and replaces OSHA Instruction CSP 01-00-002 (STP 2.0-22B); sets out instructions for State Plans in developing Strategic Plans and Annual Performance Plans; and implements revisions to the State Plan monitoring system.
- II. **Scope.** This instruction applies OSHA-wide.
- III. **Action Information.**
  - A. **Responsible Office.** Directorate of Cooperative and State Programs, Office of State Programs.
  - B. **Action Offices.** National, Regional, and Area Offices involved in State Plan monitoring, acting as liaisons, and State Plans.
- IV. **Actions Required.** All offices must implement the policy and procedures contained in this instruction.
- V. **Cancellation.** OSHA Instruction CSP 01-00-002 (STP 2.0-22B), dated March 21, 2001, and subsequent changes are cancelled by this instruction.
- VI. **References.**
  - A. PL 91-596, The Occupational Safety and Health Act of 1970.
  - B. CSP 02-00-002, Consultation Policy and Procedures Manual, January 18, 2008.
  - C. 29 CFR Parts 1902, 1908, and 1952-1956.
  - D. CPL 02-03-003, Whistleblower Investigation Manual, September 20, 2011.
- VII. **State Plan Impact.** This instruction discusses parts of 29 CFR to which State Plans must adhere. Additionally, this instruction provides policy guidance to OSHA personnel regarding their role in the creation, oversight, support, and withdrawal of OSHA State Plans. The implementation of this policy guidance will affect the interactions between OSHA and State Plans. No State Plan response to this instruction is necessary.



## Chapter 2 Coverage

Reserved – Pending Revisions to 29 CFR 1952 & 1956

## Chapter 3 State Plan Establishment and Approval

- I. **Introduction.** Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act) gives states an opportunity to administer their own occupational safety and health programs upon OSHA approval of a State Plan and sets out the general criteria for establishing one. More detailed criteria are established in 29 CFR Part 1902 for State Plans covering both state and local government and private sector employment and in 29 CFR Part 1956 for State Plans covering state and local government employment only.

States interested in developing an OSHA-approved State Plan should contact their Regional Office (RO) for guidance and assistance. Contact information for OSHA Regions and individual State Plans is available on OSHA's State Plan webpage. The RO must notify the Directorate of Cooperative and State Programs (DCSP) of the state's interest. The RO and DCSP will provide support to the state in the development of a draft State Plan documents.

- II. **Submission of Draft State Plans.** In general, a state must have the legal basis (i.e., basic legislation) for a State Plan prior to pursuing initial approval and submitting a State Plan Narrative. The state should then inform OSHA of its interest in pursuing initial approval. The state shall submit the necessary documentation and draft a State Plan proposal to the RO for review. The proposal shall include a State Plan Narrative in a concise form that clearly explains the state's policies and procedures, and should provide documentation in an appendix to each section of the narrative. A detailed outline of the required contents of the narrative is included. At this point, the legal authority for the State Plan and its policies and procedures will be reviewed by OSHA and discussed with the state. The State Plan approval process involves much time and coordination between the state and OSHA.

For developmental plans, the State Plan Narrative shall include satisfactory assurances that the State Plan will conform to the criteria established under 29 CFR Part 1902 (for comprehensive plans, covering state and local government and private sector employees) or in 29 CFR Part 1956 (for state and local government State Plans) within three (3) years from the commencement of the State Plan's operation, and the State Plan Narrative should also describe the specific actions the state proposes to take. A comprehensive developmental schedule describing the completion of the above actions within three (3) years and the dates within which intermediate and final action will be taken should be submitted as the final element of the State Plan Narrative.

As final actions are taken by the state with respect to the developmental aspects of the State Plan, documentation of these items should be submitted to OSHA for insertion in the appropriate State Plan appendix throughout the life of the State Plan. The procedures for completion of developmental steps - certification may be found in 29 CFR 1902.33, 1902.34 and 1902.35.

The draft State Plan Narrative must include:

Table of Contents. The table of contents should list each of the headings below and the corresponding page numbers, along with the accompanying appendices.

A. General Background and Legal Authority.

1. History. Describe the history of state activities relating to occupational safety and health conditions.
2. Existing Legal Basis for the State Plan. Identify the existing legal basis for the State Plan. Basic legislation must be in place and approved by OSHA. If the State Plan is a developmental plan, and if program changes are necessary which require further executive or legislative action to meet OSHA's requirements, identify such changes, and submit the following:
  - a. A copy of the appropriate order, a copy of the bill, or a draft of the legislation that has been or will be proposed for enactment;
  - b. A statement of the Governor's support of the legislation or order;
  - c. A legal opinion that the proposed legislation or executive action will meet the requirements of OSHA and Part 1956 for state and local government State Plans or Part 1902 for comprehensive State Plans in a manner consistent with the state's constitution and laws; and
  - d. A timetable for the adoption of the legislation or order.
3. Employee Coverage. Describe the scope of coverage with respect to employees under the State Plan, including the following:
  - a. Identify those public sector employee groups (both state and local government) who are covered under the State Plan; as well as the private sector employee groups covered for comprehensive State Plans;
  - b. If any political subdivision employees are excluded from the State Plan's scope of coverage, identify the limitation in either the state law or constitution which prohibits the state from regulating occupational safety and health conditions in political subdivisions;
  - c. Provide a breakdown of employment by agency and subdivision, as well as industry for comprehensive State Plans; and
  - d. Describe the types of work performed. Assignment of North American Industrial Classification System (NAICS) to each workplace is encouraged.
4. Issue Coverage. Identify any occupational, industrial, or hazard grouping excluded from coverage under the State Plan, and provide details as to why coverage is unnecessary in these excluded areas.
5. Appendix A. Appendix A must include the following:
  - a. Enacted legislation or executive order;
  - b. A draft of any proposed supplemental legislation or order;

- A statement of the Governor's support of the proposed legislation and/or order; and
- A legal opinion (i.e., from the State Attorney General).

B. Designated State Agency.

1. State Designee. Identify the state agency or agencies responsible for administering the State Plan throughout the state.
2. Concurrent Authority and Responsibilities. Describe the concurrent authority and responsibilities of the designated agency other than regulation of occupational safety and health conditions.
3. Delegation. If delegation to or contracts with other statewide agencies is intended by the designated state agency, describe those responsibilities subject to delegation or contracts, as well as the controls over the delegated or contracted agency which the designated state agency intends to implement.
4. Appendix B. Appendix B must include the following:
  - a. A letter from the Governor designating the state agency; and
  - b. Contracts and/or agreements with delegated agencies, or a timeframe and the nature of intended contracts if in the developmental stage, where applicable.

C. Standards and Variances.

1. Identical Standards. Indicate whether the state agency has adopted or intends to adopt the same standards established by the Assistant Secretary for OSHA or whether alternative standards will be adopted by the state.
2. Procedures for Identical Standards. Describe the procedures for the adoption of the same permanent standards established under Section 6 of the OSH Act.
3. Procedures for Alternative Standards. Describe the procedures for the development and adoption of [\(29 CFR 1902.4\(b\)\(2\)\(iii\)\)](#) and [29 CFR 1956.11\(b\)\(2\)\(iii\)](#) alternative standards, including:
  - a. Consideration of expert technical knowledge;
  - b. Provision for interested persons to submit information requesting the development or promulgation of new standards, or the modification or evaluation of existing standards; and
  - c. Provision for interested persons to have an opportunity to participate in any hearing on the development, modification, or establishment of standards.
4. Emergency Temporary Standards. Describe the procedures for prompt and effective standards-setting actions for the protection of employees against new and unforeseen hazards, including the authority to establish

emergency temporary standards. This authority should include those situations where employees are exposed to unique hazards for which existing standards do not provide adequate protection.

5. Issues to Be Addressed by Standards. Identify how the state standards provide for the following:
  - a. In the case of any state standards dealing with toxic material or harmful physical agents, describe how the standards in this area will adequately ensure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard addressed by such standard for the period of his working life. In responding to the above, also address how the development of state standards in this area considers the best available evidence through such avenues as research, demonstration, experiments, and experience under OSHA and any other safety and health laws.
  - b. Identify how state standards contain appropriate provisions for the furnishing to employees of information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure. In addition, the procedures for furnishing this information should include labeling, posting, and, where appropriate, the results of medical examinations being furnished only to the appropriate state officials and, if the employee so requests, to his/her physician.
  - c. Describe how the state standards contain, where appropriate, specific provisions for the use of suitable protective equipment and for control or technological procedures with respect to such hazards, including the monitoring or measuring of such exposure.
  - d. If the state adopts standards identical to existing OSHA standards, such standards will be deemed to meet the above requirements. However, since states may also establish standards in areas not yet addressed by OSHA, the state should respond to the issues raised above for those standards.
6. Assurance for Continued Effectiveness. Provide assurances that the State Plan will continue to develop or adopt standards which are or will be at least as effective (ALAE) as those established under Section 6 of the OSH Act. In providing the above, the State Plan should address the following issues:
  - a. Adoption of state permanent standards within six months from the promulgation of the federal regulation establishing the standard under Section 6 of the OSH Act.
  - b. Adoption of emergency temporary standards within 30 days from the promulgation of the emergency temporary standard under Section 6 of the OSH Act.

7. Procedures for Granting Variances. Describe the procedures for the granting of variances, including how the State Plan provides authority for the granting of variances from state standards upon application of an employer which corresponds to variances authorized under OSHA (see [29 CFR Part 1905](#) and Section 6 of the OSH Act). In addition, describe how the procedures allow for the modification, revocation, and renewal of variances. In describing the variance procedures, the following issues should be addressed:
  - a. That any variance granted may only have future effect;
  - b. There must be a procedure for public notice for every action granting a variance, limitation, variation, tolerance, or exemption;
  - c. Employer notice procedures to the employees or authorized representative where the employer has applied for the variance, including giving a copy of the application to the employees' authorized representative, posting a statement, giving a summary of the application, and specifying where a copy may be examined (at the places where notices to employees are normally posted), and by other appropriate means;
  - d. Procedures which allow for the consideration of the views of interested parties when a variance has been applied for, including: giving affected employees both notice of and the opportunity to participate in hearings (such as procedures which allow affected employers and employees to request a hearing while the application is pending) or other appropriate proceedings relating to the applications for variances;
  - e. Procedures for the conduct of a hearing, including the following:
    - i. Procedures which allow for the modification, revocation, and renewal of variances;
    - ii. Procedures which allow for the official conducting the hearing to hold pre-hearing conferences, as well as establishment of consent findings, discovery, etc.;
    - iii. Procedures which allow for the filing of exceptions to the decision of the hearing official, and the transmission of the hearing record to the state administrative authority for its review and decision; and
    - iv. Procedures which allow for judicial reviews of the state administrative authority's final agency action.
  - f. Describe the procedures for the granting of temporary variances, as well as the modification, revocation, or renewal of the variances (see Section 6 of the OSH Act and [29 CFR Section 1905.10](#)), including how such procedures address the following criteria before a variance can be granted:
    - i. The employer is unable to comply with a standard by its effective

date because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alterations of facilities cannot be completed by the effective date;

- ii. The employer is taking all available steps to safeguard his employees against the hazards covered by the standard; and
  - iii. The employer has an effective program for coming into compliance with the standard as quickly as possible.
- g. Describe the procedures for the granting of permanent variances, as well as the modification, revocation, or renewal of these variances (see Section 6(d) of the OSH Act and [29 CFR Section 1905.11](#)). Procedures for the granting of permanent variances should address the issue as to whether the proponent of the variance has demonstrated by a preponderance of the evidence that conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employees which are as safe and healthful as those which would prevail if the employer complied with the standard.

8. Appendix C. Appendix C must include the following:

- a. Standard promulgation procedures (such as the state's Administrative Procedures Act) at least as effective as [29 CFR Part 1911](#) or a timeframe for the development of such procedures;
- b. State standards at least as effective as existing federal OSHA standards, or a timetable for the development thereof;
- c. Standards comparisons for alternative standards (in a specified format) or a timetable for the development and submission thereof; and
- d. Variance regulations at least as effective as [29 CFR Part 1905](#) or a timetable for the development thereof.
- e. Note: As new standards are adopted over the life of the State Plan, they should be added to this appendix.

D. Enforcement.

- 1. Regulatory Basis for Enforcement Program. Identify how the state law and/or regulations include the provisions set forth below, as well as how the State Plan intends to implement these provisions through its enforcement program.
- 2. Inspection Procedures. The State Plan should address the following issues (see Section 8 of the OSH Act and [29 CFR Part 1903](#) and the Field Operations Manual):
  - a. Identify the State Plan's authority to inspect covered workplaces,



- including inspections in response to complaints where there are reasonable grounds to believe a hazard exists;
- b. Identify the State Plan's authority to enter without delay, and at reasonable times, any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee;
  - c. Describe the State Plan's procedures for termination of inspections when an employer refuses to permit an inspection, and appropriate action by the enforcement agency (such as obtaining compulsory order ) when there has been a refusal;
  - d. Describe the procedures which permit the State Plan to question privately any employer, operator, agent, or employee;
  - e. Describe the State Plan's right to review records which are required to be maintained under the State Plan and other records which are directly related to the purpose of the inspection;
  - f. Identify the prohibitions against advance notice of inspections, except in special, defined circumstances (see [29 CFR Section 1903.6](#));
  - g. Describe how the State Plan establishes a mechanism whereby a representative of the employer and a representative of the employees have an opportunity to accompany the inspector during the physical inspection of the workplace. If there is no authorized representative for the employees, then there should be a provision for consultation by the inspector with a reasonable number of employees;
  - h. Describe the procedures for the prompt restraint or elimination of any conditions or practices in covered places of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise established in the State Plan. Such procedures should address the following issues:
    - i. Immediately informing employees and employers of such hazards, and that the State Plan is recommending a civil action to restrain such conditions or practices;
    - ii. Taking steps to obtain immediate abatement of the hazard by the employer; and
    - iii. Authority to initiate necessary legal proceedings to require such abatement, such as judicial restraint of the conditions or practices.
3. Complaint Procedures. The State Plan should address the following issues:



- a. Describe how the State Plan provides an opportunity for employees and their representatives to bring possible violations to the attention of the designated state or local agency with responsibility before, during, and after inspections;
  - b. Identify how the State Plan provides for notification of employees (or their representatives) when the State Plan decides not to take compliance action where violations are alleged by the employees or their representatives;
  - c. When a decision not to take compliance action is made, describe the informal review process, which should include: written notification of the decision not to take compliance action, the accompanying reasons, a description of the informal review process, and written statements of the dispositions of such reviews;
  - d. Describe how the State Plan protects the confidentiality of the complainant employee, such as the withholding of the names of complainants from the employer upon the request of the complainant employee; and
  - e. Describe the State Plan's non-formal complaint procedures.
4. Workplace Retaliation Protections. Identify those provisions in the State Plan which provide for the following workplace retaliation protections and procedures (at least as effective as [29 CFR 1977](#)):
  - a. Necessary and appropriate protection to an employee against discharge or workplace retaliation with respect to terms and conditions of employment for filing a complaint, testifying, or otherwise acting to express his rights under the State Plan;
  - b. Filing of a workplace retaliation complaint within a specified time;
  - c. A specified timeframe in which state agency decisions regarding a workplace retaliation complaint will be rendered;
  - d. Ability of the state agency to initiate compensatory actions, including back pay and reinstatement of the employee; and
  - e. An appropriate mechanism for ensuring that no further workplace retaliation will occur.
5. Methods for Compelling Compliance. Identify those methods which the State Plan uses or intends to use in compelling employer compliance, as well as the procedures for abatement of hazards. Such methods and procedures should address the following issues:
  - a. Prompt notice to employers and employees is provided when an alleged violation of standards has occurred, including the proposed abatement requirements. Such notice should include the issuance of a written citation to the employer and posting of the citation at or near the site of the violation. Citations should describe with

particularity the nature of the alleged violation, including a reference to the provision of the state law, standard, rule, regulation, or order alleged to be violated. Any citation should also fix a reasonable time or times for the abatement of the alleged violation. If the citation is a result of an employee-requested inspection or employer notification of a violation, a copy should also be sent to the employee or representative of employees who made such a request or notification;

- b. Advising the employer of any proposed sanctions, wherever appropriate, including a notice to the employer by certified mail within a reasonable time of any proposed sanctions. Such notices should be after or concurrent with the issuance of a citation, and within a reasonable time after the termination of the inspection. The employer should also be notified of his right to contest the citation or the notification of the proposed penalty;
- c. Submission by interested persons of data relating to the abatement of a hazard and a consideration by the State Plan of such data prior to the issuance or modification of an abatement order;
  - i. If a system of monetary penalties is not the most appropriate enforcement mechanism for public sector employers under the State Plan, describe the alternative enforcement mechanism, and address the following issues, which may include: administrative orders; judicial orders and mandamus actions; red tag procedures; expanded employee rights and participation in enforcement, including: the right to contest citations, as well as abatement periods; mandatory agency self-inspection procedures; and employee complaint procedures.
- d. The proposed first instance sanctions or penalties and the relationship between these penalties and the gravity of the violation, including penalties or "alternative sanctions" (for state and local government State Plans) for:
  - i. Repeated violations;
  - ii. Serious violations;
  - iii. Other than serious violations;
  - iv. Failure to abate a violation within the period permitted for its correction;
  - v. Willful violations;
  - vi. Willful violations which lead to the death of any employee; and
  - vii. Factors for assessment and reduction of penalties, including due consideration of the appropriateness of the penalty with respect to the size of the employer's activity being charged, the gravity of the violation, the fault of the employer, and the history of previous

violations.

6. Review System for Contested Cases. Identify the review system for contested cases with respect to violations alleged by the State Plan, as well as abatement periods, proposed penalties, or alternative sanctions. The review system should include the following:
  - a. A timeframe for the filing of contested cases;
  - b. Procedures whereby an employer has a right to contest citation, penalty, and abatement periods;
  - c. Procedures whereby an employee has a right to question the reasonableness of abatement periods;
  - d. Procedures which permit employees or their authorized representatives to have an opportunity to participate in the review proceedings;
  - e. Informal (pre-contest) review procedures;
  - f. Formal review proceedings, including the right of review from the decision of the hearing examiner;
  - g. Procedures for reviews of administrative decisions to a judicial body; and
  - h. The ability of the state agency to obtain, through the appropriate compulsory process, necessary evidence or testimony in connection with inspection and enforcement proceedings, such as discovery depositions, interrogatories, and subpoenas.
7. Employee Access to Information. Describe how the State Plan addresses the issue of employee access to information and posting of notices to employees. Identify the provision whereby employees have access to information on their exposure to toxic materials or harmful physical agents and how employees receive prompt information when they have been or are being exposed to such materials or agents at levels in excess of those prescribed by the applicable safety and health standards. The provision should incorporate the following mechanisms:
  - a. Observation by employees of the monitoring or measuring of such materials or agents;
  - b. Employee access to the records of such monitoring or measuring;
  - c. Prompt notification by an employer to any employee who has been or is being exposed to such agents or materials in excess of the applicable standard or standards; and
  - d. Informing employees of corrective action being taken.
8. Other Prohibited Actions and Sanctions. Identify how the State Plan provides penalties for the following types of prohibited actions:
  - a. Penalties for any person who gives advance notice of any

- inspection without authority from the designated agency;
- b. Penalties for any person who makes any false statement in any application, record, plan, or other document filed or required to be maintained under the State Plan; and
  - c. Penalties for employers who violate any of the required posting requirements.
9. Inspection Scheduling System. Describe how the State Plan provides for an inspection scheduling system, including how the system addresses the following priorities:
- a. Priorities by type of inspection (i.e., programmed, unprogrammed, etc.); and
  - b. Priorities by hazard, workplace, and equivalent NAICS.
10. Voluntary Compliance Program. Identify how the State Plan will undertake programs to encourage voluntary compliance by state and local government employees and employers, including the following:
- a. Training and education of state and local government employees and employers, including types of courses, etc.;
  - b. Priorities for the scheduling of training programs;
  - c. Public information programs;
  - d. On-site consultations to state and local government employees and private sector sites for those states with 21(d) private sector consultation programs; and
  - e. Encouragement of agency self-inspection programs.
11. Laboratory Support Services. Describe how the State Plan provides for and utilizes laboratory support services.
12. Assurances for Continued Effectiveness. Provide assurances that the State Plan will continue to be at least as effective as OSHA.
13. Appendix D. Appendix D must include the following:
- a. Regulations or procedures equivalent to [29 CFR Part 1903](#) or a timetable for their development;
  - b. Regulations or procedures equivalent to [29 CFR Part 1977](#) or a timetable for their development;
  - c. Inspection scheduling system (high hazard first) or timetable for its development;
  - d. Procedures for on-site consultation or a timetable for their development;
  - e. Regulations or procedures which are equivalent to [29 CFR Part 2200](#) or a timetable for their development; and

- f. State Field Operations Manual and Industrial Hygiene Manual or timetable for their development (this may be a separate volume if desired).
- E. Recordkeeping and Reports.
  - 1. Record and Report Requirements. Describe how the State Plan compiles injury and illness statistics and addresses the following requirements:
    - a. Provide assurances and identify how employers covered by the State Plan will maintain records and make reports of occupational injuries and illnesses in a manner similar to those required of employers under OSHA (see Section 24(e) of the OSH Act and [29 CFR Part 1904](#)), including:
      - i. Annual summary of occupational illnesses and injuries;
      - ii. Retention of records for five years;
      - iii. Reporting of all work-related fatalities within eight hours;
      - iv. Reporting of all work-related inpatient hospitalizations, all amputations, and all losses of an eye within 24 hours;
      - v. Penalties for falsification or failure to keep records and reports; and
      - vi. Description of the state's statistical program and Bureau of Labor Statistics (BLS) activity.
  - 2. Annual Survey. Conduct an annual survey to establish incidence rates, etc., through participation in the BLS program.
  - 3. Management Information System. Describe the State Plan's management information system, and address the following issues:
    - a. Stage in development (manual, automated); and
    - b. How data is used for managing the State Plan.
  - 4. Form and Content of Reports. Provide assurances that the designated agency shall make such reasonable reports to the Assistant Secretary containing such information as he or she may from time to time require, including the following:
    - a. Quarterly reports to be submitted to the Assistant Secretary within 10 days from the close of the quarterly period;
    - b. Participation in the annual BLS survey;
    - c. Data and information on the implementation of the specific inspection and voluntary compliance activities included within the State Plan;
    - d. Statistical information pertaining to work-related deaths, injuries, and illnesses in employment and places of employment covered by the State Plan as the Assistant Secretary may from time to time

require; and

- e. Periodic reports to the Assistant Secretary on the extent to which the State Plan, in the implementation of its State Plan, has attained those goals established for the State Plan which are consistent with OSHA's goals, including:
  - i. Measures of performance;
  - ii. Measures of output; and
  - iii. Results which will determine the efficiency and effectiveness of the State Plan.

5. Appendix E. Appendix E must include the following:

- a. Regulations or procedures equivalent to [29 CFR Part 1904](#) or a timetable for the development thereof;
- b. Management information system; and
- c. Reporting requirements.

F. Personnel.

- 1. Sufficient Numbers of Personnel. Provide assurances that the designated agency or agencies and all government agencies to which authority has been delegated have, or will have, a sufficient number of adequately trained and qualified personnel necessary for the enforcement and administration of the State Plan. With respect to sufficient numbers of personnel, the following issues should be addressed:
  - a. Number of present safety compliance officers and the anticipated number of safety compliance officers over the next three years;
  - b. Number of present health compliance officers (industrial hygienists) and the anticipated number of health compliance officers over the next three years;
  - c. Number of other compliance officers at the present time (specify the different classifications) and the anticipated number of such inspectors over the next three years;
  - d. Number of present on-site consultants and the anticipated number of such consultants over the next three years;
  - e. Number of anti-retaliation personnel at the present time and the anticipated number of anti-retaliation personnel over the next three years;
  - f. Number of training and educational staff;
  - g. Total funded staff; and
  - h. If under or over OSHA's benchmark, provide a justification for this result.

2. Organization of Staff. Describe the organization of the staff, including supervisors and support staff.
  3. Qualified Staff Requirements. With respect to whether the staff is adequately trained and qualified, provide the following information:
    - a. Minimum qualifications for state administrative and enforcement positions; and
    - b. Training programs for staff, including:
      - i. Attendance at OSHA Training Institute courses;
      - ii. On-the-job training; and
      - iii. In-house training programs.
  4. State Plan's Merit and Hiring Systems. Describe the State Plan's merit system and hiring system, and address the following issues:
    - a. Conformance with the merit system requirements described below:
      - i. Standards for a Merit System of Personnel Administration, 45 CFR Part 70, issued by the Secretary of Labor, including any amendment thereto; and
      - ii. Any standards by the U.S. Civil Service Commission, pursuant to Section 208 of the *Intergovernmental Personnel Act of 1970*, modifying or superseding the above standards; and
    - b. The State Plan's commitment to affirmative action in the hiring of state employees.
  5. Appendix F. Appendix F must include the following:
    - a. A current staffing or organizational chart (including cooperating agencies), as well as a chart which describes the State Plan's staffing and organization as projected over a three-year period;
    - b. State job descriptions for all positions in the State Plan;
    - c. Supplemental assurances required for merit system approval or a timetable for submission thereof; and
    - d. Affirmative action plan or a timetable for the development of the plan.
- G. Budget and Funding.
1. Commitment of Adequate Funds. In order for a State Plan to be approved, Congress must authorize additional funding to OSHA to support the State Plan. In addition, the state must provide satisfactory assurances that the state will devote adequate funds to the administration and enforcement of the State Plan, and include the following:
    - a. Funds available for the administration and enforcement of the State Plan;



- b. Source of the state's funding for the State Plan; and
    - c. Fifty percent commitment of state funds to the overall costs of the State Plan.
  - 2. Appendix G. Appendix G must include the following:
    - a. A detailed budget for the State Plan's first year of operations (using the grant format);
    - b. Projection for the next two years' budgets for the administration and enforcement of the State Plan.
- H. Comprehensive Developmental Schedule.
  - 1. If a state submits a State Plan that does not fully meet all of the criteria under [29 CFR 1902](#) or [1956](#), it must include satisfactory assurances that the state will take the necessary steps to meet the criteria within the three-year period immediately following the commencement of the State Plan's operation. Developmental plans must include:
    - a. The specific actions the state proposes to take and a time schedule for their accomplishment—not to exceed three years—at the end of which the State Plan will meet the criteria in 29 CFR 1902.3 for full State Plans or 29 CFR 1956.10 for public employee only State Plans. For each item addressed in the narrative section which is in a developmental stage, provide a comprehensive schedule which indicates the following:
      - i. Specific actions the state proposes to take;
      - ii. A schedule for the completion of such actions within three years;
      - iii. The dates within which intermediate and final action will be taken; and
      - iv. If necessary, program changes include legislative action by a state, a copy or a draft of the legislation, accompanied by:
        - (1) A statement of the Governor's support of the legislation; and
        - (2) A statement of legal opinion that the proposed legislation will meet the requirements of the Act in a manner consistent with the state's constitution and laws.

**III. Review and Approval of Draft State Plans.** This section provides detailed information on the various stages of State Plan approval. A concise reference to the below information is available as a flow chart in [Appendix B](#).

A. Regional and National Review.

The RO is responsible for conducting the initial review of a draft State Plan in consultation with DCSP and Department of Labor's Office of the Solicitor. The



RO must notify the state when changes or corrections to the State Plan are required and provide technical assistance to the state, if necessary. The RO must ensure that the State Plan completely meets the criteria as set out in [29 CFR 1902](#) or [1956](#). The RO must review the draft plan to ensure that all of the program elements outlined above in the State Plan Narrative are at least as effective as the comparable federal OSHA programs. If changes are required, the RO will work with the state to ensure that the necessary modifications are made. During the review process, the RO must also work with the state on the development of the first 23(g) grant and inform the National Office (NO) of proposed funding needs. The RO must maintain liaison with the state to track state actions, such as the status of legislation. After the state makes all required changes to the plan, and after final RO review, the Regional Administrator (RA) must submit a final copy of the plan in electronic format to DCSP. The RA must submit all comments and recommendations to DCSP at the time of plan submission. In addition to reviewing the draft plan with the RO, DCSP must coordinate the review of the State Plan within the NO and obtain appropriate clearance within the Agency and the Department. DCSP is responsible for making a recommendation regarding initial approval of the plan to the Assistant Secretary, based on the comments from the RO and NO.

B. Initial Approval.

A Section 18(b) determination, usually called initial approval, is an official finding by the Secretary of Labor that the State Plan meets the structural criteria for initial approval as set forth in Section 18(c) of the OSH Act.

1. Notice of Proposed Initial State Plan Approval. Based on all information received, DCSP must determine, in coordination with the Region, whether to recommend to the Assistant Secretary that the State Plan receive initial approval. DCSP must prepare for the Assistant Secretary's signature, and have published, a *Federal Register* Notice of Proposed Rulemaking (NPRM). This notice must be in accordance with Subpart C of Part 1902 or Subpart C of 1956. The notice must:
  - a. Explain the submission of the State Plan and describe it;
  - b. Identify any State Plan-related matters on which public comment would be of benefit to the Agency;
  - c. Request written public comment;
  - d. Notify the public of availability of the State Plan for inspection and copying; and
  - e. Inform interested parties of the right to request formal or informal hearings, if necessary. Such requests must present specific written objections to the proposed initial State Plan approval, and the Assistant Secretary must decide whether the objections raised are substantial and, if so, must publish a notice of the time and place of the scheduled hearing.

2. State Notification. The state agency must publish a plan submission notice in an equivalent statewide publication within 10 days of publication in the *Federal Register*.
3. Copies of the Plan for Public Inspection. DCSP, the RO, and the designated state agency must make the State Plan and any public comments available for inspection and copying no later than five days following the publication of the notice.
4. *Federal Register* Notice of Initial Determination. After consideration of the public comments received, state responses, subsequent amendments, and other information provided, the Assistant Secretary makes a determination about whether the State Plan should be initially approved, then DCSP will publish a *Federal Register* Notice (FRN).
  - a. Approval of the State Plan. If the Assistant Secretary determines that the State Plan should be approved, DCSP will publish a FRN granting initial approval of the plan under Section 18(c) of the OSH Act and codifying the approval by establishing a new subpart of [29 CFR Part 1952](#) or [1956](#). Initial approval permits the State Plan to adopt and enforce workplace safety and health standards for issues covered by the State Plan under authority of state law.
  - b. Disapproval. If the determination is to not approve, the FRN must indicate that the determination was for disapproval and document where the State Plan was unable to meet the criteria and indices of effectiveness under Section 18(c) of the OSH Act and [29 CFR 1902](#).
5. Grant Approval. Concurrent with State Plan approval or on an agreed-upon date shortly thereafter, OSHA will approve the first 23(g) grant to fund the State Plan.

C. Progress of Developmental Plans.

A state has three years from the commencement of operations (initiation of enforcement activity) under a State Plan to complete all of the developmental steps specified in the State Plan as approved. The date of “commencement of operations” is ordinarily the State Plan approval date (the date the FRN is signed by the Assistant Secretary) but must be no later than the effective date of the grant approved under Section 23(g) of the Act.

1. Certification of Completion of Developmental Steps. Generally, whenever a State Plan completes a developmental step, it must submit to the RO either documentation or a Plan Change supplement. Upon the completion of all of the developmental steps in a State Plan, the RO must prepare and send to DCSP a memo certifying that the State Plan has completed all of its developmental steps. If the Assistant Secretary finds that the state has completed all the developmental steps specified in the

State Plan, DCSP will prepare a notice announcing the certification for publication in the *Federal Register*.

- This is the final step of approval for State Plans covering the public sector only.
2. Timeframe of the Evaluation Period for 18(e) Determination (Final Approval). An 18(e) determination, or final State Plan approval, cannot be made for at least three years after initial State Plan approval. There is no maximum time limit within which a State Plan must receive final approval.
- D. Concurrent Enforcement.

After initial approval of a State Plan, but prior to final approval, Section 18(e) of the Act provides for a period of concurrent enforcement coverage in comprehensive State Plans. During this period of concurrent authority, the Assistant Secretary may, but is not required to, exercise federal enforcement authority with respect to standards promulgated under Section 6 of the Act where the State Plan has comparable standards.

1. Level of Federal Enforcement. Regulations at [29 CFR Part 1954](#) establish the factors to be considered in determining how federal enforcement authority should be exercised. These factors include:
  - a. Whether the plan is developmental or complete;
  - b. The results of evaluations conducted by OSHA;
  - c. Whether the State Plan has adopted standards that are at least as effective as OSHA's standards; and
  - d. Any other relevant matters, which may include:
    - Coordinated utilization of federal and state resources to provide effective worker protection throughout the nation;
    - The necessity for clarifying the rights and responsibilities of employers and employees with respect to federal and state authority;
    - Progressively greater responsibility and state ability to enforce in particular issues subject to evaluation for effectiveness; and
    - The need to react promptly to a State Plan's failure to provide effective enforcement of standards.
2. Recognition of State Procedures. If there are differences between federal and state procedures, OSHA will defer to approved state procedures in areas, such as variances, informing employees of their rights and obligations, and recordkeeping and reporting requirements. Subject to pertinent findings of effectiveness under this part, federal enforcement proceedings will not be initiated where:
  - a. An employer is in compliance with:
    - a state standard that has been found to be at least as effective as

- the comparable OSHA standard;
  - any temporary or permanent variance from such state standard granted to that employer with regard to the employment or place of employment;
  - any order or interim order in connection with such state variance; or
  - any modification or extension of such state variance, provided that such variance action was taken under the terms and procedures required under [29 CFR 1902.4\(b\)\(2\)\(iv\)](#), and the employer has certified that he has not filed for such variance on the same set of facts with the Assistant Secretary.
- b. An employer has posted the approved State Plan poster in accordance with the applicable provisions of an approved State Plan and [29 CFR 1952.10](#).
- c. An employer is in compliance with the recordkeeping and reporting requirements of an approved State Plan as provided in [29 CFR 1952.4](#).
- E. Operational Status Agreements (OSAs).

Operational status marks the implementation by a State Plan of its basic private sector enforcement program, including standards, qualified inspectors, and a review system for contested enforcement actions. OSHA may voluntarily suspend its concurrent enforcement authority for issues covered by the State Plan by means of an OSA signed by the RA and State Plan designee (see [29 CFR 1954.3](#)).

1. Criteria for OSAs.
- a. Enabling Legislation. A state with an approved State Plan must have enacted enabling legislation substantially in conformance with the requirements of Section 18(c) and [29 CFR Part 1902](#) in order to be considered operational. This legislation must have been reviewed and approved by OSHA under 29 CFR Part 1902. States without such legislation, or where state legislation as enacted requires substantial amendments to meet the requirements of [29 CFR Part 1902](#), will not be considered operational.
  - b. Approved State Standards. A State Plan must have standards promulgated under state law that: are identical to OSHA standards; or are at least as effective as the comparable OSHA standards; or have been found by OSHA to provide protection at least as effective as comparable OSHA standards. Where a State Plan has not promulgated standards in an area or has promulgated standards that OSHA has found not to provide protection as effective as that provided by the comparable OSHA standards, the State Plan will not be considered operational in that area.
  - c. Whistleblower Investigation. The State Plan must have the ability to investigate whistleblower complaints under the state's provision

- analogous to OSH Act Section 11(c). The investigative procedures must follow the instructions in the State Plan's Whistleblower Manual and must be at least as effective as the federal whistleblower investigation system.
- d. Personnel. While the State Plan must have a sufficient number of qualified personnel to enforce the standards in accordance with the state's enabling legislation, the State Plan is not required to meet its staffing benchmarks in order to achieve operational status. However, where a State Plan lacks the qualified personnel to enforce in a particular area, the State Plan will not be considered operational in that area even though it has enabling legislation and appropriate standards.
  - e. Review of Enforcement Actions. Provisions for a system for reviewing and hearing employer and employee contests of state citations and penalties must be in effect.
  - f. Evaluation Reports. In making the determination of the appropriate level of federal enforcement, the RA must consider the results of OSHA's ongoing monitoring and evaluation of the State Plan.
2. Procedures. In order to be considered operational, a State Plan must demonstrate to the RA that it has met all of the criteria at 29 CFR 1954.3.
- a. OSAs. When a State Plan is determined to be operational, the RA and the State Plan designee should sign an OSA setting forth the federal-state coverage responsibilities. The RA shall consult with DCSP concerning all required elements and format. At a minimum, OSAs must cover all of the following:
    - The scope of the State Plan's operational status and delineation of coverage responsibilities, including the issues excluded from the State Plan, the issues where state enforcement will not be operational at the time of the agreement, and the dates for commencement of such operations;
    - Procedures for referral, investigation, and enforcement of employee requests for inspections.
    - Procedures for reporting fatalities and other designated major incidents to the responsible enforcing authority;
    - Provision for resumption of concurrent federal enforcement activity for failure to substantially comply with the agreement as a result of evaluation or other relevant factors;
    - Procedures for limited resumption of federal enforcement authority where both the State Plan and OSHA agree it is in the best interests of safety and health; and
    - Procedures for addressing whistleblower complaints.
  - b. With the signing of an OSA, the State Plan assumes responsibility

for conducting all enforcement activities related to issues where the State Plan is operational, and federal enforcement authority is not exercised over those issues.

- c. *Federal Register* Notice. Upon approval of an OSA, DCSP, in coordination with the Region, must prepare a notice of the operational status of the approved State Plan for the Assistant Secretary's signature and publication in the *Federal Register*.
- d. Changes in the Level of Federal Enforcement. If changes in the level of enforcement are required, the RA and the State Plan designee must sign appropriate amendments to the agreement and submit them to DCSP, which will prepare a notice for the Assistant Secretary's signature and publication in the *Federal Register*.

F. Final Plan Approval.

A Section 18(e) determination, usually referred to as final approval, is an official finding by the Secretary of Labor that the State Plan meets the criteria for approval as set forth in Section 18(c) of the OSH Act in actual operation. With final approval, OSHA formally relinquishes its concurrent authority for safety and health issues covered by the State Plan.

- 1. Assistant Secretary Determination. When the Assistant Secretary has determined that a State Plan meets the eligibility criteria listed below and meets the statutory and regulatory approval criteria on the basis of actual operations of the State Plan, the Assistant Secretary may, upon request from the state, make a Section 18(e) determination granting final approval of the State Plan. Final approval results in formal relinquishing of federal enforcement authority in all areas covered by the State Plan, with the exception of federal workplace retaliation protection authority covered by Section 11(c) of the OSH Act.
- 2. Eligibility Criteria. The Region, in coordination with DCSP, shall determine whether the State Plan meets the following criteria for final approval. The State Plan:
  - a. Has been certified as having completed all of its developmental steps and successfully operated for at least three years.
  - b. Has allocated staff sufficient to meet its safety and health compliance staffing benchmarks.
  - c. Provides ongoing data on program activities at a sufficient level of detail to be comparable to federal data that OSHA can extract from its computerized OSHA data system. State Plan participation in OSHA's computerized data system meets this requirement.
- 3. Review of Effectiveness. If the State Plan meets the eligibility criteria, the Assistant Secretary must then determine whether the State Plan, in actual operation, meets the specific criteria in [29 CFR 1902.37](#). The following are done concurrently:
  - a. 18(e) Evaluation Report. The Region must prepare an evaluation report that includes a review of the State Plan's performance for



- each index of effectiveness in [29 CFR 1902.4](#), as well as discussion of any issues. The Region must send the draft report to DCSP and the State Plan for comment and then transmit the final evaluation report to the State Plan.
- b. Plan Changes and Standards. The Region works with DCSP and utilizes the Automated Tracking System (ATS) to determine whether the State Plan is current on adoption of all Plan Changes and standards and whether all Plan Changes and standards are at least as effective as OSHA's requirements. Any significant outstanding Plan Change and standard issues that affect State Plan effectiveness must be resolved prior to the granting of final approval.
4. *Federal Register* Notice of Eligibility for Final Approval.
    - a. In consultation with the Region and based on the 18(e) evaluation report, DCSP must determine whether the State Plan's performance meets all indices of effectiveness contained in [29 CFR 1902.4](#) and whether OSHA should proceed with publishing an FRN proposing final approval and seeking public comment.
    - b. If the recommendation is affirmative, DCSP must establish a record of all relevant State Plan documents for public review and comment (for inclusion in the official docket). These include the most recent version of all documents listed in Section II of this chapter that outline the requirements for a State Plan, the two most recent 23(g) grants, and all evaluation reports since the Certification of Completion of Developmental Steps. Copies of the docket also must be made available in the Regional and State Plan Offices. DCSP also must prepare and publish, in coordination with the Region, an FRN of eligibility for final approval for the Assistant Secretary's signature.
  5. State Notification. The State Plan must publish a summary of the FRN of eligibility for final approval in an equivalent statewide notice within 10 days of publication of the FRN. DCSP and the Region must coordinate with the State Plan concerning publication of the state notice sufficiently in advance to avoid any potential delays that could arise from state register publication schedules.
  6. Public Comments and Requests for Hearing.
    - a. DCSP must review any public comments received and obtain comments from the Region and state. The state must be afforded an opportunity to submit to the public record a response to the public comments. If the state submits a response, DCSP must place it in the docket, even if the 30-day comment period has ended.
    - b. If OSHA receives a request for an informal hearing that it

considers reasonable and based on evidence, DCSP must publish an FRN of informal hearing within 30 days of the close of the comment period.

7. Informal Hearing. If so requested, OSHA must hold an informal hearing following the procedures in [29 CFR 1902.40](#).
8. *Federal Register* Notice on Determination of Final Approval. Based on all information received, DCSP must determine, in coordination with the Region, whether to recommend to the Assistant Secretary that the State Plan receive final approval. DCSP must prepare for the Assistant Secretary's signature and have published an FRN of Final Determination.
  - a. Approval. If the determination is for approval, the FRN must give notice of final approval, document that the State Plan meets the criteria and indices of effectiveness, and codify the final approval under the appropriate subpart of [29 CFR Part 1952](#).
  - b. Disapproval. If the determination is to not approve, the FRN must state that the determination was for disapproval and document where the State Plan was unable to meet the criteria and indices of effectiveness.
    - Effect of Negative 18(e) Determination. If the Assistant Secretary determines that the State Plan (or any severable portion of the State Plan) has not met the criteria of effectiveness, then the Assistant Secretary may retain standards and enforcement authority for those issues covered by the State Plan (or those portions of the State Plan) that do not meet the criteria of effectiveness, as indicated in the Operational Status Agreement. On the basis of this finding, the Assistant Secretary may either: (1) begin proceedings to withdraw approval of the State Plan or a portion of it (see [Chapter 8](#)), or (2) afford the State Plan a reasonable amount of time to meet the criteria of effectiveness, after which time approval would be granted or withdrawal proceedings would take place, according to the following process:
      - Establish a timeframe for meeting the eligibility criteria, generally not less than one year; set the conditions for continuing coverage of the State Plan; and afford the state an opportunity to agree to these conditions.
      - Publish an FRN outlining the reasons for not making an affirmative 18(e) determination at the time, setting forth the timeframe for meeting the eligibility requirements and any conditions on continuing the State Plan in the interim.
      - At the end of the established timeframe, initiate proceedings to make the final 18(e) determination.



## Chapter 4 State Plan Changes

**I. Introduction.** Each State Plan provides assurances that they will continue to meet the requirements in Section 18(c) of the OSH Act and Part 1902 or Part 1956 to maintain a program that is at least as effective as federal OSHA. From time to time after initial plan approval, State Plans will need to make changes to their plans. This chapter outlines the various changes that State Plans will need to make to fulfill their assurances, including adoption of federal and state standards. Federal and state actions relating to changes to approved State Plans are categorized as State Plan Changes, generally and include the following sub-categories: Federal Program Change (FPC), State-Initiated Change (SIC), developmental change, or evaluation change. Each of these State Plan Changes are documented in the ATS. Due to the complexity and significance of standards, when any category of change includes a change to standards, the procedures in Section IV below will be utilized.

## **II. Types of Plan Changes.**

- A. Federal Program Changes. An FPC is any alteration in the federal program which is initiated and implemented by OSHA. When the FPC is denoted as “adoption required or equivalency required,” State Plans are required to respond to FPCs by adopting and implementing a change that is virtually identical to OSHA’s or adopting and implementing an alternative change which is deemed to be at least as effective as OSHA’s.
1. The following are examples of an FPC:
    - a. A change in the OSH Act that impacts Section 18 as it relates to State Plan elements that are mandated by the OSH Act;
    - b. A change in the federal OSHA regulations (for example, 29 CFR Parts 1903, 1904, 1905, and 1977) or OSHA standards that necessitate a parallel change in state regulations, laws, or standards related to a state program; or
    - c. Core policy issues that may have an impact on effectiveness.
  2. An FPC will either be identified as adoption required, equivalency required, or adoption not required (optional or encouraged). Upon notification of an FPC, each State Plan must:
    - a. Notify OSHA within 60 days from the effective date of the directive or issuance of the *Federal Register* Notice (FRN) whether the State Plan will adopt an identical or different change. When adoption is not required, this is only necessary if the State Plan elects to adopt the change.
    - b. Adopt the change within six months from the effective date of the directive or official issuance date of the FRN.

3. When a State Plan does not adopt an FPC identically, the State Plan must also complete the following steps:
  - a. If the FPC is adoption required, submit a Plan Change supplement to OSHA, preferably in electronic format, with a comparison document clearly identifying any differences between the federal and State Plan changes, within 60 days of adoption, as specified in [29 CFR 1953.4\(b\)\(4\)](#). If adoption is not required, but the State Plan elects to adopt, the State Plan shall send OSHA the adoption date within 60 days of that adoption.
  - b. Either post its at least as effective as change on its State Plan website and provide the link to OSHA, or provide OSHA with information on how the public may obtain a copy.
- B. State-Initiated Changes. Any change to a State Plan that is undertaken at the State Plan's option or on its own volition and is not necessitated by federal requirements is a SIC. A significant change is any change which impacts the effectiveness of the State Plan, including those changes that increase the State Plan's effectiveness. SICs which are not considered significant include updated references, minor revisions to verbiage, and minor editorial changes to formatting of State Plan directives or manuals.
  1. The following are examples of a significant SIC:
    - a. Change in personnel levels or funding;
    - b. Changes in State Plan jurisdictional limitations that could require a change in the level of federal enforcement; or
    - c. Major legislative, regulatory, judicial, or administrative policy changes (see Section IV for state-initiated standards changes).

Note: FPCs and SICs are each mutually exclusive. An FPC is a federal OSHA change that the State Plan is responding to by adopting or implementing a State Plan change, whereas an SIC is solely a State Plan change made at the State Plan's own option.

2. Upon determination that a significant change will be made to a State Plan, the following actions must be taken:
  - a. The State Plan must notify the Region as soon as it becomes aware of any significant change. State Plans must also enter all significant SICs in the SIC Log on the ATS. Minor SICs do not need to be tracked in the ATS if they do not impact the effectiveness of the program and its policies and are only minor in nature.
  - b. Plan supplements must be submitted within 60 days of state adoption as set out in [29 CFR 1953.4\(b\)\(4\)](#). For significant changes, the timeframe may be shorter if agreed upon by the Region and State Plan.

- c. Where the SIC establishes a program for which there is no federal parallel, any legislation, regulations, and procedures must be submitted, along with a description of how this program will relate to existing State Plan activities and responsibilities.
  - d. To incorporate a change to the Annual Performance Plan, the State Plan must propose, after consultation with the Region, performance measures for evaluation of major new State Plan activities for which there is no federal parallel and federal monitoring data are not sufficient to evaluate the program's effectiveness.
- C. Developmental Change. A developmental change is a change made to a developmental State Plan that documents the completion of a program component which was not fully developed at the time of initial plan approval.
  - 1. Completed Developmental Changes. The State Plan must submit Plan Change supplements or documentation of adoption as set out in [29 CFR 1953.4\(a\)\(2\)](#) within 60 days of completion of developmental steps, in accordance with its approved developmental schedule.
  - 2. Missed Developmental Steps. When a developmental step is missed, the State Plan must immediately document the reasons in writing to the Region. This document must include an explanation of why the step was not completed and a request for approval of a new completion date, generally within 90 days. The State Plan must describe any current impact on the program of not completing the step and specific actions that the State Plan proposes to take to ensure completion by the new date.
- D. Evaluation Change. An evaluation change is a change made to a State Plan when federal OSHA reveals that some substantive aspect of a State Plan has an adverse impact on the implementation of the State Plan and needs revision.
  - 1. The following items are examples of activities that may lead to evaluation changes:
    - o Federal Annual Monitoring and Evaluation (FAME) Report
    - o Complaint About State Plan Administration (CASPA)
    - o Special Study
    - o An element discovered through quarterly meeting discussions between the State Plan and OSHA, or discovered at any other time, which may impact the effectiveness of the State Plan
  - 2. The Region will provide an appropriate report or letter that contains specific recommendations required to be met by the State Plan. The State Plan must submit documentation of adoption of a

plan supplement in accordance with Section III below and [29 CFR 1953.4\(c\)](#) or a timetable for completion of the change. The documentation will include a description of the change impacts the State Plan and how it meets the recommendations in the federal evaluation report, special study, or CASPA.

**III. Plan Change Supplements Review.** The RO is responsible for conducting a review of program changes. Plan Change supplements are needed for all required program changes. The Region must notify a State Plan when a required Plan Change submission is overdue and request that the State Plan submit the required documentation within a reasonable time period. If necessary, the Region may provide assistance in developing a timetable for adoption, submission, and implementation of interim procedures to maintain program effectiveness. If a State Plan still does not submit the required documentation within the new timetable, a report shall be submitted to the Directorate of Cooperative and State Programs (DCSP) assessing the impact on State Plan effectiveness and recommending appropriate action.

A. Plan Change supplements must include all of the following components (For Plan Change supplements related to standards, see Section IV):

1. A cover letter describing the State Plan Change;
2. A revised table of contents for the State Plan, if necessary;
3. Dated replacement pages with an indication of page number and/or placement, to be inserted in the State Plan Narrative document;
4. A listing of each significant difference (with page numbers);
5. For each difference listed, a rationale for the adoption of an alternative provision, including a statement on how the State Plan Change meets the statutory and regulatory approval criteria;
6. The web address for the State Plan's change, if posted on the State Plan's webpage, or information on how the public may obtain a copy of the change; and
7. The State Plan point of contact.

B. **Identical State Plan Submissions.** If a State Plan adopts a change identical to the corresponding federal program component, the State Plan's implementing memo will be filed in the official State Plan file, and the Region shall ensure that the ATS Log is updated as appropriate. The Region is not required to submit an approval memo to the National Office (NO) when the State Plan identically adopts a program change.

- C. Different or Alternative Approach State Submissions. Upon receipt of a State Plan supplement, the Region or Area Office shall conduct a thorough review, consisting of:
1. Ensuring that any independent State Plan provisions and substantive differences from OSHA provisions have been identified and explained by the State Plan, with appropriate reference to page numbers and sections of the OSHA provision, directive, etc. and the State Plan's submission in its comparison document;
  2. Addressing whether the State Plan Change is at least as effective as the corresponding federal program component and, therefore, should be approved. If there is no specifically comparable component, the Region should examine the policies that federal OSHA would apply in similar circumstances (e.g., the federal general industry, construction, or other standard(s) or compliance policies, application of the general duty clause or other programs that OSHA would use in a comparable enforcement situation) and assess the impact of the change on the effectiveness of the State Plan as a whole;
  3. Discussing Regional comments with the State Plan as appropriate;
  4. Determining whether concurrent review by the NO is appropriate;
  5. If the initial review indicates that clarification or supplementary information is necessary, the State Plan shall be notified in writing of any additional information required and the timeframe for its submission, generally not to exceed 30 days; and
  6. Upon completion of the Region's review, a preliminary determination shall be made on whether the State Plan Change is at least as effective as the comparable federal program component.
    - a. If the RA concludes that the State Plan policy or procedure does not appear to meet OSHA approval criteria, the State Plan must be afforded the opportunity to submit written comments within 30 days of notification. Extensions may be granted, if appropriate.
    - b. If there are questions about the effectiveness of the State Plan Change, or if there has been controversy within the State Plan about the adoption of the State Plan Change, the RA may send a copy of the Plan supplement to DCSP to coordinate a NO review of the Plan supplement. The NO will provide advice and guidance to the RA in determining the acceptability of the Plan supplement.

- c. The RA must determine whether public comment should be sought to assist the Agency in deciding to approve or disapprove the State Plan Change (see Section [1953.6\(c\)](#)). A public comment period is generally not required for a Plan supplement, except where State Plan policy differs significantly and its effectiveness is not clear. If public comment is necessary, the RA must prepare an FRN providing a reasonable period for submission of comments.
  - d. The RA must determine whether to approve or disapprove the State Plan Change, upon consideration of any public comments and additional information or comments submitted by the State Plan.
- D. Approval of Plan Supplements. The RA must notify the State Plan and DCSP of the acceptability of the Plan Change and prepare an FRN of approval (see Section [1953.6\(d\)](#)). The FRN should briefly identify any differences between the State Plan's change and the comparable federal program component. The Region should work closely with DCSP on the preparation of the notice, and DCSP will process the FRN.
- E. Disapproval of Plan Supplements. If, following the preliminary determination, consideration of public comment, and any revisions by the State Plan, the RA and DCSP still find that the State Plan Change is not at least as effective as the federal program, the RA must begin disapproval procedures. The RA must consult with DCSP on this decision and work closely with DCSP and the Office of the Solicitor (SOL) during all phases of disapproval proceedings, including preparation of the FRNs.
  - 1. "Show Cause" Letter to the State Plan. The RA must prepare a letter to the State Plan that is cleared by DCSP and gives the State Plan 30 days to correct or clarify the supplement or show cause why OSHA should not begin formal proceedings disapproving the supplement.
  - 2. Request for Public Comment. If the State Plan's response to the "show cause" letter is unsatisfactory to OSHA, an FRN announcing that the Plan Change is subject to disapproval and that OSHA is inviting public comment must be issued. If, after review of the public comments, OSHA decides that the record supports approval of the Plan Change, an FRN will be issued approving the change.
  - 3. Informal Hearing. If the RA and DCSP determine that the record is inconclusive or that their review supports disapproval of the Plan Change, an informal hearing will be scheduled. If a hearing is scheduled, the RA must prepare an FRN for the Assistant Secretary's signature announcing the hearing on the possible disapproval of the Plan Change. The State



Plan must publish a similar notice within five days of the publication of the FRN.

4. Tentative Decision. On the basis of the entire record of written comments received, as well as the informal hearing, the Assistant Secretary must publish a tentative decision in the *Federal Register*, upon the advice of the RA and DCSP, either approving or disapproving the State Plan Change in accordance with [29 CFR 1902.21](#) (unless the State Plan waives the tentative decision). Interested persons participating in the hearing must have an opportunity to file exceptions to the tentative decision and objections to such exceptions, in accordance with [29 CFR 1902.22](#).
5. Formal Decision. The Assistant Secretary must then publish a formal decision in the *Federal Register* ruling on exceptions and objections filed, and making the final decision either approving or disapproving the State Plan Change in accordance with [29 CFR 1902.22](#).
6. Discussions with the State Plan after a final decision to disapprove a State Plan Change must cover the effect of the decision and appropriate actions the State Plan must take, including a specific timeline. If the State Plan is unwilling or unable to make necessary and timely changes that impact the effectiveness of their initial or final approval, action may be taken to allow for resumption of federal coverage. See [Chapter 8](#) for further information on modifying and removing a State Plan.

#### IV. State Plan Change for State Standards.

- A. State Adoption of Federal Standards. A new or revised state standard is enforceable by the State Plan upon adoption under authority of state law, prior to federal OSHA review and approval of the standard. If OSHA determines that the standard is not approvable and the State Plan does not make revisions to address OSHA's concerns, the revised state standard would remain in effect until completion of the rejection process.
  1. Notification of Federal Standards. When OSHA promulgates a new standard or revises an existing standard, DCSP shall notify the State Plans and ROs via email unless the ATS makes an automatic notification to the State Plans and ROs. If the new or revised standard is more stringent than the previous federal standard, DCSP shall require the State Plan to either adopt a standard which is at least as effective as the new federal standard within six months from the effective date identified in the final FRN or demonstrate that an existing state standard is at least as effective in accordance with [29 CFR 1953.5\(a\)](#). Specific adoption requirements will be detailed in a notification from the ATS and from DCSP; below are the general requirements along with the timeframe for adoption.

2. Notification of State Plan's Intent to Adopt. State Plans must provide the RA notification of their intent within 60 days of federal adoption of the standard change. This notification should include (a) the State's Plan's intent to adopt and implement the standard change; and, if not adopting an identical standard, (b) the State Plan's intent to develop an alternative change, which is at least as effective as; or (c) the reasons why no change is necessary to maintain a program which is at least as effective as the federal standard.
3. Timeframe for Adoption. Within six months of the *Federal Register* publication date of a new federal standard, interim final rule, or more stringent amendment to an existing standard, State Plans must adopt a new or an amended state standard that is at least as effective as the federal standard. Within 60 days of adoption of the state standard, State Plans must submit a State Plan supplement to OSHA for review. State Plans must adopt a standard comparable to a federal emergency temporary standard within 30 days, which must be submitted to OSHA for review within five days of state adoption.
4. Effective Dates of State Standards. Under [29 CFR 1953.5\(a\)\(1\)](#), in order to avoid delays in worker protection, the effective date of the state standard and any of its delayed provisions must be the date of state promulgation or the federal effective date, whichever is later. The Assistant Secretary may permit a longer time period if the State Plan makes a timely demonstration that good cause exists for extending the time limit.
5. Interim Enforcement Relating to New Federal Standards. During the period prior to State Plan adoption of a new federal standard, or more stringent amendment, the following must occur:
  - a. 18(e) State Plans shall make every effort to enforce the new or revised standard through existing state standards, the general duty clause, or other enforcement mechanism. Although State Plans with final 18(e) approval have sole enforcement authority in responding to complaints and other issues, the Regions must ensure that 18(e) State Plans respond effectively to hazards involving new federal standards or requirements. The Regions should provide technical assistance and monitor the State Plan's response closely to ensure that the State Plan takes all actions necessary to address the hazards and enforce the new or revised standard through existing state standards, the general duty clause, or other enforcement mechanisms.
  - b. 18(b) State Plans shall make every effort to enforce the new or revised standard through existing state standards, the general duty



clause, or other enforcement mechanism. Since State Plans with interim approval do not have sole enforcement authority, the Region can conduct enforcement activities when a State Plan is unable to timely and effectively address hazards involving new federal standards or requirements, pursuant to the operational status agreement established with that State Plan.

- B. State Adoption of Independent State Standards. Independent state standards have no directly comparable federal standard, but may involve an issue covered federally through general standards provisions or written compliance policies. OSHA must determine whether such state standards contain major or minor differences to determine whether public comment is necessary. A standard contains minor differences if its requirements do not differ significantly from OSHA's enforcement requirements. A State Plan that adopts an independent standard must compare the standard with the federal general industry, construction, or other standard(s) or compliance policies that OSHA would use in a comparable enforcement situation to demonstrate that the State Plan's requirements are at least as effective as federal OSHA's requirements.
1. Standards Review Procedures. The RA holds primary responsibility for the review and approval of state standards. DCSP is responsible for providing technical assistance to the Regions, including coordinating with other OSHA Directorates for technical expertise, as needed, and facilitating the *Federal Register* process, if needed.
  2. State Plans must submit all supplement packages for OSHA review and approval within 60 days of adoption (except emergency standards, which must be submitted within five days). The State Plan must provide the following to the RA :
    - a. A copy of the standard's adoption order or link to the posted version, including text of the standard or amendment.
    - b. If the standard is different, a copy of the summary of the public comments and of the hearing transcript.
    - c. The numbering conversion table (if applicable) showing numbers for state standards sections and corresponding federal numbers.
    - d. The standards comparison document. The State Plan must submit a standards comparison document unless the standard is identical. The comparison document must list each federal provision affected, the corresponding state provision, and a rationale for each provision that differs substantively from the federal version as to why it is at least as effective as the federal standard (see [Appendix C](#) for additional information).

- e. Standards Table. State Plans must also notify the Directorate of Administrative Programs of adoption of new standards so that the OSHA Information System (OIS) standards table can be updated.
3. For all different or independent state standards the RA must determine whether the standard is at least as effective as the federal OSHA standard.
    - a. Equal Employment Opportunity Commission (EEOC) Review under the Americans with Disabilities Act (ADA). The Federal Laws and Regulations Executive Order states that an employer who is complying with an OSHA standard is exempt from any ADA requirement that conflicts with the standard. The EEOC has agreed that this exemption extends to state standards that are identical to federal ones, but not to different or independent state standards. Standards with ADA implications include those relating to medical records and access to them, medical monitoring and surveillance, and medical removal protection. If ADA-related questions arise during litigation proceedings concerning a different or independent state standard, the State Plan may ask the RO to seek an informal opinion from EEOC on whether the standard conflicts with ADA requirements. The RO should forward these requests to DCSP. DCSP will then obtain an informal opinion from EEOC's Office of Legal Counsel.
    - b. Review the Standard. If it appears that the standard may not be at least as effective, then the RA must determine if an NO review is appropriate; if so, then the RA will discuss the issues with DCSP. In addition, the Directorate of Standards and Guidance (DSG) will assist for general industry or maritime standards, and the Directorate of Construction (DOC) will assist for construction standards.
    - c. Negotiate Changes. If it is determined that the standard is not at least as effective, the Region must negotiate corrections with the State Plan. If the State Plan disputes the Region's determination and does not want to change the standard, the Region must follow the standards disapproval procedures outlined below.
    - d. If Public Comment Is Required. The RA, in consultation with the NO, shall determine whether the standard requires public comment (see [Appendix C](#)). If public comment is required, the RA will:
      - Request for Public Comment. In consultation with DCSP and SOL, prepare an FRN requesting public comment. Transmit the FRN to DCSP for publication.

- Review the Docket. After the public comment period has ended, review all comments in the docket, and send copies to the State Plan and DCSP for review and comment. After consultation with DCSP and SOL, inform the State Plan of changes that must be made (if any).
  - Approval Decision. Decide, after consultation with DCSP and SOL (and, if appropriate, DSG and DOC), whether to approve the standard.
  - Preparation and Transmittal of *Federal Register* Notices. Transmit FRNs to DCSP for review and for publication in the *Federal Register*. Send all notices electronically, and send three signed original hard copies of the Notices and one copy each of the standard or standards comparison and the documentation of the standard's adoption. DCSP will review and publish the FRNs received from the Regions concerning standards approval, request for comment, and approval following public comment.
  - Regional Press Releases. Publish a Regional press release, if appropriate, when the FRN is published.
- C. Standards Disapproval and Rejection Process. A determination is initially made by the RA, DSG or DOC, the Directorate of Enforcement (DEP), and DCSP, in consultation with the Assistant Secretary and SOL, that a state standard is not at least as effective as the comparable federal standard and that initiation of a formal rejection process is appropriate. The final decision is made by the Assistant Secretary.
1. “Show Cause” Letter to the State. The RA notifies the State Plan by letter (in concurrence with DCSP) that the state standard has been determined to be less effective than the federal standard and gives the State Plan at least 30 days to respond and agree to correct or clarify the standard or show cause why OSHA should not begin formal proceedings to reject the standard in accordance with [29 CFR 1953.6\(e\)](#) and [29 CFR 1902.17-.23](#). DCSP must circulate the State Plan's response to the 30-day “show cause” letter to involved Directorates and SOL, as appropriate. If the State Plan agrees to make appropriate changes to the standard, the rejection action is deferred based on an agreed-upon timetable. If the response provides no new information, the rejection process proceeds.
  2. Intent to Reject, Request for Public Comment, and Opportunity to Request a Hearing. If the State Plan's response to the “show cause” letter is determined to be unsatisfactory, the RO in coordination with the NO shall

prepare an FRN announcing that the Plan Change is subject to disapproval and that OSHA is inviting public comment. An FRN (three copies) shall be prepared and signed announcing OSHA's preliminary determination that the state standard is less effective and requesting public comment. The FRN will provide the background on the standard and the reasons for rejection. It shall also include the State Plan's response to the "show cause" letter. The FRN should describe the technical differences in the state and federal standards and explain in appropriate detail why the standard is considered less effective. DCSP coordinates clearance of the FRN and review of the comments in the NO and shall process the FRN for publication.

3. The State Plan must publish similar statewide notice within five days of the federal publication. The State Plan must be provided an opportunity to respond to all comments received.
4. Decision to Proceed. Based on review of the comments received, including any State Plan responses, a decision is made whether the record supports approval of the standard or proceeding with a formal rejection process.
  - a. Approval. If sufficient evidence on the record has been provided to support approval of the standard, an FRN is prepared and signed approving the standard and terminating the rejection process.
  - b. Rejection. If the record is inconclusive or supports rejection of the standard, formal rejection proceedings in accordance with [29 CFR 1902.17](#) shall be initiated.
5. Notice of Hearing. An FRN shall be prepared and signed announcing the time and place for a public hearing. This FRN will establish the hearing procedures, including notice of intent to appear, statement of position, and whether data or other documentary evidence will be submitted. (Hearing procedures must comply with 5 U.S.C. 556 and 557.)
  - a. Hearing. The hearing is held in the state. An Administrative Law Judge (ALJ) assigned by the Chief ALJ presides over the hearing, and after opportunity for review of the transcript by any interested party, the ALJ certifies the record, including the transcript and all relevant written submissions. Within 30 days of notice of the certification of the record, interested parties may submit proposed findings of fact, conclusions of law, and a proposed decision, together with a supporting brief, to OSHA.
  - b. Tentative Decision. On the basis of the entire record of written comments received, the hearing record, and any post-hearing

submissions, and after consultation with the NO, an FRN shall be prepared and signed announcing the Assistant Secretary's tentative decision either approving or rejecting the state standard, in accordance with [29 CFR 1902.21](#). The tentative decision may be waived by the State Plan and participating interested parties.

- The tentative decision must include findings of fact and conclusions of law supporting the decision. The decision must also be served on the State Plan and participating parties in addition to publication in the *Federal Register*.
  - Interested persons participating in the hearing must be afforded an opportunity to file exceptions to the tentative decision (30 days). Opportunity to file objections to such exceptions (15 days thereafter) can also be offered.
- c. Final Decision. Thereafter, the Assistant Secretary issues a final decision on the matter in the *Federal Register*, including ruling on any exceptions or objections filed to the tentative decision and summarizing the public comments submitted to the record.
- d. Level of Federal Enforcement. The Assistant Secretary's final decision also will determine the appropriate nature and level of federal enforcement authority for conditions previously covered by the disapproved state standard. Depending on the nature of the rejected state standard, reconsideration or withdrawal of approval of the State Plan, in whole or in part, may be necessary (see [Chapter 8](#) for further information on modifying and withdrawing a State Plan).
- D. Assurances. Pursuant to [29 CFR 1902.3\(c\)](#) a State Plan shall include or provide for the development or adoption of, and contain assurances that the State Plan will continue to develop or adopt, standards which are or will be at least as effective as those promulgated under Section 6 of the OSH Act. When standards rely on certification of equipment or processes, OSHA requires certification by Nationally Recognized Testing Laboratories. If a State Plan relies on a different certification organization, then the State Plan must use only state funds and must assure OSHA that the certification applies only within that state and that no reciprocity of recognition outside the state is promised or implied. Additionally, if a State Plan elects to rely on different certification organizations, the grant application must clearly specify this. The State Plan must also honor federal OSHA certifications if the OSHA and state safety requirements are the same.

Pursuant to [29 CFR 1902.3\(c\)](#) and [1953.5\(a\)\(2\)](#), standards that specifically apply to products distributed or used in interstate commerce or that have been designated by OSHA as a product standard (e.g. hazard communication) must

meet the product clause test of Section [18\(c\)\(2\) of the OSH Act](#). The product clause test mandates that state standards must be required by compelling local conditions and must not unduly burden interstate commerce.

Additionally, [29 CFR 1902.37\(b\)\(4\)](#) requires States Plans to interpret an identical standard in a manner consistent with OSHA's interpretation of its own standard (and/or appropriate appellate court decisions) and a different standard in a manner at least as effective as OSHA's interpretation of its own standard. State Plans must have the ability to provide clarification and/or interpretations when provisions of a state standard do not clearly express the requirement.

## Chapter 5 Mandated Activities - Grant Application

**I. Introduction.** This manual, as well as the annual grant application directive, specifies the requirements and procedures by which State Plans, in partnership with their RAs and the NO will complete annual grant applications and develop Five-Year Strategic Plans and Annual Performance Plans comparable to those developed by OSHA in its approach to meeting the *Government Performance and Results Act of 1993* (GPRA) requirements. GPRA shifted OSHA's monitoring to a strategic planning, goal-based, data-driven system with an emphasis on outcome-based measures. State Plans are expected to self-audit and self-report through use of the State OSHA Annual Report (SOAR) and the State Activity Mandated Measures (SAMM) Report. Each State Plan develops a Five-Year Strategic Plan and an Annual Performance Plan with activities that reflect the shared vision of reducing workplace injuries, illnesses, and fatalities. State Plans have the option of adopting performance goals that are identical to those of OSHA. All parties should stay focused on their commitment to achieving the shared mission. Instructions for completing the required financial documents and developing Annual Performance Plans, which are part of the Application for Federal Assistance (Section 23(g) grant application), are included in this chapter. Definitions of strategic planning terms used in this instruction can be found in [Appendix A](#).

**II. Basic Principles of Strategic and Performance Plans.** The following basic principles govern State Plans' development of Strategic and Annual Performance Plans:

1. All State Plans must, at a minimum, adopt federal OSHA's Strategic Goal #1 ("Improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities") as part of their Strategic Plans, either using identical performance goals and indicators or ones tailored to state-specific needs or issues.
2. State Plans may choose to adopt federal OSHA's other strategic goals or develop their own. However, each state's occupational safety and health program must continue to satisfy the mandated activities of the OSH Act and 29 CFR Parts 1902 and 1956 (e.g., standards, enforcement program, prohibition against advance notice).
3. State Plans must develop performance goals that are broad enough to encompass all major components of the state program, including private and public sector enforcement, consultation, and compliance assistance even if they choose to adopt only one strategic goal.

Note: As required by §1908.1(a), State Plans operating private sector consultation programs under the authority of Section 18 of the OSH Act and funded under Section 23(g) of the Act must be at least as effective as consultation programs operated under the authority of Section 21(d) of the Act. All State Plans operating 23(g) consultation programs must amend their programs to reflect the revised federal consultation program.



Although public sector consultation programs are not funded under Section 21(d) or directly subject to the requirements of 29 CFR 1908, State Plans are encouraged to apply -- to the greatest extent feasible -- the principles established in the revised federal private sector consultation program. State Plans may, but are not required, to establish a recognition and exemption program for the public sector.

4. As part of the 23(g) grant application, each State Plan must develop an Annual Performance Plan describing the specific actions to be undertaken by the State Plan to accomplish its strategic and performance goals during that fiscal year. This Annual Performance Plan will serve as the required grant narrative.
5. OSHA will evaluate each State Plan's performance on whether it makes reasonable progress towards accomplishing the strategic and performance goals contained in its Strategic Plan and the significance of the actual results achieved. OSHA will review state performance using the methods agreed upon by OSHA and the State Plan in its Annual Monitoring Plan.
6. State Plans developing Strategic Plans with strategic and performance goals that differ from federal OSHA's (e.g., targeting reductions based on data from state-based systems, such as workers' compensation) are responsible for identifying the data necessary to establish an appropriate measurement and reporting system. These data are to be agreed upon by the State Plans and Regions. Guidelines for state reporting and inclusion of state results in OSHA's Annual Report to Congress are presented in [Chapter 7](#) of this manual.
7. The focus of a state's occupational safety and health program, as identified by the State Plan's strategic and performance goals, establishes the parameters within which the State Plan's operations will be evaluated to determine whether they are at least as effective as federal OSHA's. The State Plan will still be expected to meet its mandated responsibilities under the OSH Act.
8. The Assistant Secretary will continue to address any significant issues or problems that impact a State Plan's ability to carry out its mandated activities or substantially comply with its State Plan commitments. Examples of modifications and withdrawal of State Plan approvals are located in [Chapter 8](#).

**III. Strategic Plan Requirements.** Each State Plan must develop a Five-Year Strategic Plan containing outcome-oriented strategic and performance goals. Strategic and performance goals and baselines for comparison may be tailored to the State Plan's own circumstances, subject to negotiation and OSHA approval. States should develop their Strategic Plans in cooperation with their ROs communicating early in the process to agree upon strategic goals, performance goals, and baselines. State Plans may consider the views of their key stakeholders and partners in the development of their Strategic Plans.

The following basic principles govern a State Plan's development of a Strategic Plan:

- A. Each State Plan must have a Five-Year Strategic Plan made up of outcome-oriented strategic and performance goals. If a State Plan's Five-Year Strategic Plan expires in the federal fiscal year in which it is submitted, the grant application must include a new Five-Year Strategic Plan or a one-year extension of the current Strategic Plan.
- B. In addition to its strategic and performance goals, each State Plan must continue to satisfy the mandated activities of the OSH Act and 29 CFR Parts 1902 or 1956 (e.g., standards, enforcement program, prohibition against advance notice, etc.) and so certify in its application and demonstrate in actual performance.
- C. All State Plans must include in their Strategic Plan a goal directed toward the reduction of fatalities, injuries, and illnesses. In addition, State Plans must develop reasonable performance goals that are broad enough to encompass all major components of the state program, including private and public sector enforcement, public sector consultation, compliance assistance, training, and cooperative programs.
- D. State Strategic Plans and Annual Performance Plans must contain outcome- or results-oriented goals. If a goal is measured only by activity-level data, the lack of an outcome- or results-oriented goal must be justified. Plans relying solely on activity-level data-based goals and measures will not be acceptable. The Performance Plans must describe the specific activities the State Plan will perform to accomplish its performance goals, must be aligned with the State Plan's Five-Year Strategic Plan, and must identify the expected outcome of these activities. Each Performance Plan must include a section that addresses the data elements and informational needs outlined in this section.
- E. State Plans are responsible for identifying the data necessary to establish an appropriate measurement and reporting system for their strategic and performance goals. These data, including baselines, are to be agreed upon by the State Plans and Regions.

Changes to Strategic Plans:

(a) Annual Review of Strategic Plans.

- State Plans must review their Strategic Plans with their Regions each year as part of the performance planning process.
- Changes to Strategic Plans should be limited to major shifts in policies, programs, or implementation strategies. Formal, written changes to a State Plan's Strategic Plan may be made no more than once a year. State Plans may not change the end-dates of their Strategic Plans as a result of the annual review process.
- If, during the annual review of its Strategic Plan, the State Plan elects to make formal, written changes to its Strategic Plan, the State Plan must submit a

written rationale for the changes and a copy of the revised Strategic Plan to the RA at the same time as the State Plan's annual 23(g) grant is submitted, and must not change the end date of the Strategic Plan or make changes more than once a year. Changes are approved by the RA as part of the sign-off process of the annual grant.

- If, during the annual review of its Strategic Plan, the State Plan elects to make no formal, written changes to its Strategic Plan, the State Plan must continue managing its program according to its original plan.

(b) Third-Year Review of Strategic Plans.

- Following GPRA requirements, each State Plan is required to conduct a comprehensive review of its Strategic Plan at least once every three years. The State Plan may either make changes to its plan at the three-year point or continue managing its program according to its original plan until the end date of that plan.
- If, during the third-year review of its Strategic Plan, the State Plan elects to make significant changes (e.g. selects new performance goals or targets) to its Strategic Plan, then the State Plan must submit a revised Strategic Plan along with the state's annual 23(g) application, effectively marking the beginning of new Strategic Plan, covering the performance period of five years from the start of the new fiscal year.
- If, during the third-year review of its Strategic Plan, the State Plan elects not to make significant changes to its Strategic Plan, then the State Plan must continue managing its program according to its original plan and submit a new Five-Year Strategic Plan by the 23(g) grant application deadline of the final year of its current Strategic Plan.

(c) Changes to a State Plan's Strategic Plan resulting from either the annual or third-year review process must be negotiated and approved by the OSHA RA, subject to further review by DCSP and the Directorate of Administrative Programs (DAP). Any changes made must be consistent with the requirements detailed in Section III of this chapter.

**IV. Annual Performance Plan Requirements.** Each State Plan must describe how it will align its 23(g) activities, including private and public sector consultation, with its annual performance goals. State Plans providing consultation services under 21(d) agreements should identify how those activities relate to the accomplishment of their overall strategic and performance goals. Each Annual Performance Plan must include the following elements:

- A. Overview of the State Plan's Occupational Safety and Health Program. This must be a comprehensive overview of the State Plan's current occupational safety and health program, including the following information:

1. Profile of the State Agency. Total number of allocated staff and breakout of compliance and consultation staff, expressed in full-time equivalents (FTEs). The profile must also include an organizational chart.
  2. State Demographic Profile. Number of employers and number of covered employees by major North American Industrial Classification System (NAICS) divisions.
  3. Identification of Covered Issues. List those issues that the State Plan's occupational safety and health program covers and those that it does not.
  4. Statement of compliance or non-compliance with appropriations riders.
- B. Mandated Activities. Because activities mandated under the OSH Act (e.g., inspections, citations, employee rights) are considered core elements of an effective occupational safety and health program, they should be tied to achievement of the State Plan's strategic goals. The Annual Performance Plan should link the performance of mandated activities to strategic tools wherever doing so is appropriate to achieving the goals. For example, standards, inspections, and citations are among the tools that could be used to achieve the strategic goal of reducing injuries and illnesses.

Where the mandated activities are neither tied to specific strategic goals nor addressed through the SAMM Report (see [Chapter 6](#)) or the Mandated Activity Report for Consultation, the Annual Performance Plan should contain assurances that these activities will be accomplished. These assurances should address:

1. Prohibition against advance notice;
2. Employee access to hazard and exposure information;
3. Safeguards to protect an employer's trade secrets;
4. Employer recordkeeping;
5. Legal procedures for compulsory process and right of entry;
6. Posting of employee protections and rights;
7. Right of an employee representative to participate in walkarounds;
8. Right of an employee to review a decision not to inspect (following receipt of a complaint from that employee); and

9. Voluntary compliance programs (see Chapter 1 in the Consultation Policies and Procedures Manual, CSP 02-00-002, for fundamental program requirements relevant to 23(g) private sector consultation activities).
- C. Annual Performance Goals. For each performance goal in the State Plan's Strategic Plan that is to be addressed during that program year, the State Plan must:
1. Establish objective and measurable annual performance goals to be achieved by the State Plan during the program year.
  2. Identify the performance indicators (including activity, intermediate outcome, and primary outcome measures) that will be used to assess progress toward achievement of the State Plan's performance goals during that program year.
  3. Describe the mix of program activities (strategies) that will be applied to accomplish the State Plan's performance goals (e.g., enforcement, standards development, and compliance assistance). This section should consist of a complete, succinct, state-specific discussion of how the State Plan will apply its resources and strategies to accomplish its goals.

If the section above is in a narrative format, include, as an appendix, a summary chart outlining the annual performance goals and performance indicators that will be used to measure state performance. The summary chart should be prepared in the format presented in the Annual 23(g) Grant Instructions.

Changes to Annual Performance Plans:

- (1) A State Plan may make adjustments or changes in strategy during the year, subject to discussion and negotiation with federal OSHA Regional staff. Such changes do not require a formal, written revision of the State Plan's Annual Performance Plan.
- (2) A State Plan must describe and explain any major deviations from its current year's Annual Performance Plan in the following year's Annual Performance Plan. The State Plan may also include this discussion in its SOAR to include justifications or rationale for the deviations. If there are justified reasons for the deviation which are reasonable to OSHA, corrective action may not be warranted. State Plans shall be encouraged to expand the focus of their next SOAR to include a broader assessment of their enforcement program, going beyond the goals in the Annual Performance Plan, and including the results of their internal audit.
- (3) Regions must document any major strategy changes in the Federal Annual Monitoring and Evaluation Report (see [Chapter 7](#)).

**V. Grant Application Process Requirements.**

A. Basic Requirements.

1. All required financial documents and instructions for completing the annual grant application are available on the State Programs Limited Access Page. Each year, funding levels and requirements will be communicated through the OSHA Directives System.
2. The 23(g) grant application includes an Annual Performance Plan describing the specific actions to be undertaken by the State Plan to accomplish its strategic and performance goals during the period covered, as well as meeting all program requirements. This Performance Plan will serve as the required grant narrative and must include performance goals that are broad enough to encompass all major components of the State Plan, including private and public sector enforcement programs, 23(g) On-site Consultation programs, and any compliance assistance activities.

In addition to providing information on compliance activities and projections as to the number of inspections (separately for private and public sectors, as well as for construction and non-construction) and On-site Consultation public sector visits anticipated during the upcoming performance year, State Plans must provide projections regarding the following compliance assistance entities and activities: Voluntary Protection Program (VPP) participants, cooperative programs (with and without enforcement incentives), and outreach participants, who constitute the total number of trainees and participants anticipated to be affected by state outreach activities during the period, such as formal training, workshops, seminars, speeches, conferences, and informal worksite training. State Plans with 23(g) On-site Consultation programs for the private sector should also include the number of Safety and Health Achievement Recognition Program (SHARP) participants in their reports. The State Plan's Annual Performance Plan must be aligned with the State Plan's Strategic Plan and describe the specific activities the State Plan will perform to accomplish its annual performance goals.

3. All grant applications must be submitted electronically using [Grants.gov](https://www.grants.gov). State Plans must ensure that their registration information is up-to-date in Grants.gov. State Plans must meet all the requirements detailed in this chapter and the annual grant application directive when submitting the application. State Plans are responsible for coordinating with their State Plan Monitor on an agreed-upon schedule to allow electronic submission of an application package, approved by the Region, to the NO through Grants.gov by the deadline specified in the annual Application for Federal Assistance (Section 23(g) grant application).

B. Grant Application Instructions. Outlined below are the contents of the grant application.

1. Financial Documents. Each State Plan is required to complete and submit the following financial documents on Grants.gov with the grant application:



- a. Form OSHA 110 – Grant Agreement. Funding will be at the prior year’s final base award level, unless otherwise noted in the OSHA Directives System. This form should be submitted on Grants.gov as a signed attachment.
- b. SF 424 – Application for Federal Assistance and SF 424A – Budget Information (Non-Construction Programs). These forms are available on Grants.gov and are submitted electronically as part of the application package. All costs may be identified under two budget categories, Administration and Program. A third category must be added where 100% state funds are used, and a fourth category must be added for private sector On-site Consultation, where applicable. State Plans may then use other categories that better reflect the State Plan’s actual organizational structure. State Plans that provide private sector On-site Consultation services through their 23(g) grant must separately identify the staffing and total funding devoted to this program in a manner that clearly delineates the program. Financial information for all object class categories, i.e., personnel, fringe benefits, travel, equipment, supplies, contractual, other, total direct charges, indirect charges, and total object categories, must be shown for each of the budget categories on the SF-424A. Funding under Section A (Budget Summary) should reflect the totals from Section B (Budget Categories).
  - Administration. This activity includes the cost of salaries and expenses that are related to the management and support of grant operations. Costs may include, but are not limited to, policy development, budget, payroll, human resources, audit, and accounting. Administrative costs include the cost of all personnel, budget, and management staff above first-line supervisors (salaries, fringe benefits, and related support expenses), as well as costs associated with the approved state indirect rate. For staff who perform both administrative and program functions and first-level supervisors who also serve in a managerial capacity for the program, salary costs shall be distributed between Administration and Program in proportion to the percent of time spent by staff in performing duties in those categories. Employees who perform administrative functions, such as human resources and budget, should be included in the administrative category, as well. No more than 25% of the total 50/50 funding (federal award plus 50% state match, not to include state overmatch) may be budgeted for administrative costs without an approved justification. (Note: Although submission of the approved indirect cost rate agreement is not required, the RA should ensure that the indirect costs contained in the grant application are based on the approved indirect cost rate agreement.) Under this activity, the 25% limit on administrative costs remains in effect. All indirect costs must be included under this activity.
  - Program. This activity includes the cost of salaries and expenses that are directly related to carrying out grant operations. All funding for



program-related activities must be grouped under this activity.  
Indirect costs may not be included under this activity.

- c. Combined Assurances and Certifications (including Lobbying Certification) with 23(g) OSHA Restrictions and Conditions. Cover all Office of Management and Budget assurances and certifications here, including: Lobbying Certification and OSHA Restrictions and Conditions. This form should be submitted as a signed attachment on Grants.gov.
- d. Supportive Cost Breakout. Prepare a detailed breakout of costs by organizational unit and staffing level, tied to the State Plan's own organizational structure. Each organizational unit should be broken out by object class category. Also include a breakout of any 100% state funds. State Plans are required to provide detailed financial information for the following eight object class categories: personnel, fringe benefits, travel, equipment, supplies, contractual, other, and indirect charges, based on either the Administration or Program budget categories or the categories used on the state's actual organizational structure, in a supportive cost breakout format.

The personnel information provided on the supportive cost breakout listing must correspond to the organizational chart included in the Performance Plan and should identify the number of on-board staff and vacant positions. All supervisory positions above the first level of supervision must be reflected in the Administration section. Compliance assistance positions must be identified. In instances where staff time (FTEs) is apportioned among multiple functions, certain guidelines must be followed. First, time allocated to the compliance assistance portion of a position must be limited to compliance assistance activities, which may include VPP, Strategic Partnerships, Alliances, speeches, training, and other cooperative program outreach efforts, but not activities directly related to Compliance or On-site Consultation, including SHARP. Second, staff time may be apportioned to both compliance assistance and On-site Consultation, so long as the appropriate allocation to separate grants is used. Additionally, when a staff member is assigned both compliance assistance work and Compliance work, special care must be taken to avoid conflicts of interest (e.g. adherence to procedures at least as effective as those discussed in Chapter 6, Section II.C.2 of the VPP Policies and Procedures Manual). Finally, staff time may never be divided between Compliance and On-Site Consultation work.

- Personnel. Staff time (FTEs) may be apportioned among several functions and between 23(g) and 21(d) in the separate grant applications.
- Fringe benefits should include information on the components and cost formula used.

- Travel refers to personnel travel costs that are reasonable and necessary to effectively manage and carry out grant activities, provide oversight or measure program effectiveness.
- Equipment, including all computer-related equipment, having a useful life of over one year and a unit acquisition cost of \$5,000 or more must be separately identified.
- Supplies refer to all consumable materials costing less than \$5,000 per unit.
- The contractual information must identify the purpose of each contract, the contractor, and the amount of the contract. Contracts for such things as laboratory sample analysis, equipment calibration, NCR maintenance and computer services, especially for the development of alternatives or supplements to the Integrated Management Information System (IMIS)/OSHA Information System (OIS), must be clearly identified.

Note: Those State Plans not using the Salt Lake Technical Center as their primary lab must provide contract information and assurances as outlined in the annual grant instructions.

- If not included elsewhere, Other should identify costs associated with such things as reimbursement to the OSHA Training Institute and associated costs for courses brought to the state.
  - Indirect costs shall be included under Administration only and should be based on an approved indirect cost rate agreement for the grant period.
  - Program Income. State Plans that are collecting fees associated with grant activities should report the estimated amount of income expected to be generated from the grant on Line 7 of the Application for Federal Assistance (SF-424A). State Plans should include a narrative description of the program income, including the nature and source of the income, as an attachment in the Grants.gov application. The program income may be reflected as part of the State Plan's matching funds contribution. Also, State Plans must report program income on the Federal Financial Report submitted each quarter. For more information on program income, please refer to OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
2. Programming Changes. If goals or measures have been changed in a way that impacts the processing of IMIS/OIS data used for tracking a State Plan's Strategic and Performance Plan results, the State Plan must submit the changes for review as directed.
  3. Review and Approval of Annual State Plan Grant. Each State Plan negotiates its Annual Performance Plans and strategic goals with its RA. Once reviewed and

approved at the Regional level, the completed grant document is submitted through Grants.gov (including, if appropriate, changes to the Strategic Plan) and reviewed by DAP and DCSP. Prior to October 1, each year, the OSHA Assistant Secretary formally approves the entire grant document and prepares a grant approval letter to the State Designee, including any conditions for changes to the State Plan's Annual Performance Plan based on RO and NO review.

## Chapter 6 Tools for Federal Oversight and Quarterly Monitoring

### **I. Introduction.**

Under the OSH Act, federal OSHA and the State Plans are responsible for carrying out mandated activities. States Plans' further responsibilities are described in 29 CFR Parts 1902, 1953, 1954, and 1956. The Assistant Secretary for Occupational Safety and Health is responsible for monitoring and reporting on the State Plans' performance. The framework for evaluation established by OSHA and the State Plans is one in which both parties jointly establish the measures of performance, where possible, and both participate in the review, assessment, and discussion of performance data.

Effective monitoring assists a State Plan in achieving its goals by identifying issues early and providing guidance to ensure the issues are promptly addressed. State Plan monitoring is intended to provide a common reference level and set of criteria for State Plan performance, as well as the degree of importance assigned to issues.

The scope of OSHA monitoring includes any State Plan activity that:

- Receives federal funding under Section 23(g) of the OSH Act; or
- Would be covered by OSHA absent an approved State Plan; or
- Would be preempted by Section 18 of the OSH Act, absent an approved State Plan.

State Plans using 100% state funding for activities that do not meet any of the foregoing tests will not generally be assessed by OSHA unless they could impact a State Plan's responsibilities under its plan.

Various tools and methods are used to track and evaluate State Plan performance. Section II of this chapter discusses general guidelines for acceptable performance. Section III, "Tools for Federal Oversight," focuses on the tools used for evaluation; and Section IV discusses quarterly monitoring. Section V focuses on annual monitoring, and Section VI focuses on monitoring against the State Plan's Performance Plan. Annual evaluation of State Plans is detailed in [Chapter 7](#), "The Federal Annual Monitoring Evaluation (FAME) and Annual Reports." The annual evaluation will also utilize the tools discussed herein.

### **II. Criteria for Acceptable State Performance.**

The following criteria are used by the State Plan Monitor in determining whether a State Plan's performance falls within the range of acceptability:

- A. Annual Performance Plan. Monitoring of a State Plan should focus on determining the extent to which a State Plan has achieved what it set out to achieve as related to the goals established in its Annual Performance Plan although mandated activities outside the scope of the Annual Performance Plan

must also be monitored. An individual State Plan's performance should not be compared to the performance of other State Plans or federal OSHA, except where indicated in the State Activities Mandated Measures (SAMM) Report.

- B. Outcome-level v. Activity-level Data. In the absence of outcome-level data, OSHA should review activity level data to evaluate whether a State Plan has applied sufficient resources and intermediate outcome level data to evaluate whether the State Plan directed those resources to areas where an impact is likely to be made. (There may be significant time lags in the reporting of primary outcome level data due to data collection constraints, e.g., the time lag for receipt of Bureau of Labor Statistics data is often up to 18 months.) It would be considered acceptable forward movement toward the goal if the State Plan demonstrates it has made sufficient progress in accomplishing the work plan milestones or objectives outlined in its Annual Performance Plan (e.g., establishing programs or developing evaluation tools).
- C. Qualitative v. Quantitative Measures. Not all State Plan annual performance goals can or should be judged against quantitative criteria. If a State Plan demonstrates it has made sufficient progress in accomplishing the work plan milestones or objectives outlined in its Annual Performance Plan (e.g., establishing programs or developing evaluation tools), then the State Plan's performance would likely be considered acceptable.
- D. Baselines. Reasonable baselines should be set for performance goals. For example, if a State Plan sets a performance goal relating to its complaint response time, its baseline should be established using the data from the first year of the plan (or as soon as that data is available) since responding to complaints is an ongoing work activity. If a State Plan sets a performance goal relating to continuing a Special Emphasis Program that was begun a year or two before the first year of the Strategic Plan performance period, it is acceptable to set the baseline in the year that program was initiated.

A State Plan may not set baselines that pre-date the State Plan's Strategic Plan by a significant number of years, i.e., three or more years prior to the beginning of the Strategic Plan performance period. Rolling baselines may be used if the data measured include very small numbers, e.g., a ten-year rolling period for fatalities in a small state. In that case, the end year of the baseline period may not be three or more years prior to the beginning of the performance period. In addition, a State Plan may not set its baselines so that its performance goals have already been accomplished before the performance period covered by the Strategic Plan has begun, except in the case of "maintenance goals" to continue with a high level of performance, such as maintaining a 95% customer satisfaction rating.

- E. Evaluating Progress. Progress in a positive direction should be considered when determining the acceptability of a State Plan's performance. That is, State Plan performance should not be evaluated against an absolute standard. For example,

if a performance goal is to reduce injuries and illnesses in a targeted industry by 15% and the results indicate a reduction of 13%, this would likely be considered acceptable performance.

However, substantial deviations from a targeted performance goal will require a discussion between the State Plan and the Region to agree upon corrective actions to be taken by the State Plan to address the performance deficiencies. For example, if a performance goal was a 15% reduction in injuries and illnesses in a targeted industry and the results indicated only a 2% reduction or an increase in injury and illness rates, then action may be warranted. At all times, the reason for the deviations from the State Plan's goal should be determined and considered prior to judging their progress.

Moderate deviations from a performance goal, such as a 5% to 10% reduction, rather than a 15% reduction, will be evaluated using the professional judgment of both OSHA and State Plan staff. Such deviations should be discussed by OSHA and the State Plan to determine whether or not they represent a performance deficiency.

### **III. Tools for Federal Oversight.**

Through monitoring, OSHA meets its statutory responsibility under the OSH Act to ensure that State Plans are operating in a manner that is at least as effective as OSHA. Many tools are used in the evaluation, including the State Plan's annual performance goals, as well as mandated activity measures. This section discusses these tools, which are defined as one of the following: (1) automated data reports, (2) manual reports, (3) documents and logs, (4) case file reviews, (5) field monitoring, or (6) special studies. Each of these categories and the tools that fall under them are discussed in this chapter.

- A. Automated Data Reports. Quantitative data is available from automated reports and should be the first source of information for analysis. Should these data sources not allow for an adequate analysis, the Monitor may utilize other methods, including customized host reports from OSHA's data system using limited selection criteria. The types of automated performance data reports are listed here. The first three reports in the list below - SAMMs, State Information Reports (SIRs), and Mandated Activity Report Consultations (MARC)s - are described in this section. The next three reports in the list below are controlled at the Area Office level and should not need explanation in this document. The last bullet below is information that would be provided by the State Plan.

- SAMM Reports
- SIRs
- MARCs
- Standardized host reports
- Standard micro reports
- Other reports from OSHA's data system
- State-generated data related to specific state strategic goals

1. SAMM Reports. Mandated compliance activities are to be tracked both quarterly and annually by comparing State Plan activity data to an established reference point. The SAMM Report provides a set of universal indicators for the mandated responsibilities of State Plans; a standard, baseline, or performance guide for each; and State Plan performance data. SAMMs are also used to evaluate public-employee-only programs. Note: SAMM Reports should be run by quarter, as well as cumulatively, from the beginning of the fiscal year. Beginning with the second quarter, there will be a quarterly report and a cumulative report.
  - a. Frequency. The SAMM Report is available as an OIS report to be run independently by a State Plan or RO at any time. DCSP will run and distribute official SAMM Reports on a quarterly basis, to include cumulative year-to-date data.
  - b. Guidelines for Use. The federal OSHA Monitor and State Plan staff should jointly review SAMM Reports and discuss performance that falls outside the pre-determined levels (refer to Section IV.B. of this chapter). Many of the principles presented will also be used for the annual review.
  - c. Data Source. The source of most performance data is OIS , but in some instances, such as data on denial of entry, the data will be provided by the State Plan to the federal OSHA Monitor.
  - d. Measurement Standard or Guide. The State Plan's performance is compared to a standard that is set by regulation, negotiation, or trend. Except in the case of performance standards set by regulation, these are not intended to serve as mandated performance goals, but as a point of reference to facilitate tracking and to aid in determining whether further analysis is needed. See below for further explanation:

<i>If:</i>	<i>then:</i>
a national standard has been established...	the national standard applies to all State Plans.
there is neither a national standard nor a related State Plan performance goal...	a negotiated fixed number for each State Plan is determined.
there is no national standard or negotiated fixed number...	performance would be compared with national and state data averaged over a three-year period.



**State Activity Mandated Measures (SAMM)**

	<b>Indicator</b>	<b>Reference/FRL</b>
1a	Average Number of Work Days to Initiate Complaint Inspections (State Formula)	Negotiated
1b	Average Number of Work Days to Initiate Complaint Inspections (Federal Formula)*	N/A
2a	Average Number of Work Days to Initiate Complaint Investigations (State Formula)	Negotiated
2b	Average Number of Work Days to Initiate Complaint Investigations (Federal Formula)*	N/A
3	Percent of Complaints and Referrals Responded to within 1 Work Day (Imminent Danger)	100%
4	Number of Denials where Entry Not Obtained	0
5	Average Number of Violations per Inspection with Violations by Violation Type – SWRU/Other	National: +/- 20%
6	Percent of Total Inspections in the Public Sector	Grant: +/- 5%
7	Planned vs. Actual Inspections – Safety/Health	Grant: +/- 5%
8	Average current serious penalty in Private Sector (total and by size of employer)	National +/- 25%
9	Percent In Compliance – Safety/Health	National +/- 20%
10	Percent of Work Related Fatalities Responded to in 1 Work Day	100%
11	Average Lapse Time – Safety/Health	National: +/- 20%
12	Percent Penalty Retained	National: +/- 15%
13	Percent of initial inspections with employee walk around representation or employee interview	100%
14	Percent of 11c investigations completed within 90 calendar days	100%
15	Percent of 11 (c) complaints that are meritorious	National: +/- 20%
16	Average number of calendar days to complete 11 (c) investigation	90
17	Percent of Enforcement Presence	National: +/- 25%

\*1b and 2b are for informational purposes only and are not mandated measures.

2. SIR. An “Interim SIR” consists of a subset of activity measures which are no longer included in the SAMM. The SIR is intended to be an internal management report.
  - a. Frequency. The report is run quarterly and cumulatively and contains quarterly and year-to-date totals.
  - b. Guidelines for Use. The SIR is primarily a report of activity data for state occupational safety and health managers’ use in the internal management of their program. As appropriate, OSHA and State Plan staff may use the SIR to supplement the SAMM as a source of information for evaluating a potential problem related to carrying out a mandated activity.

**Interim SIR**

<b>Scope</b>	<b>Indicator</b>
<b>Private Sector</b>	1. Percent programmed inspections -Safety -Health
	2. Percent programmed inspections with violations -Safety -Health
	3. Percent serious violations -Safety -Health
	4. Abatement period -Safety -Health
	5. Average penalty (other than serious) -Safety -Health
	6. Inspections per 100 hours -Safety -Health
	7. Percent violations vacated
	8. Percent violations reclassified
	9. Percent penalty retention
<b>Public Sector</b>	1. Percent programmed inspections -Safety -Health
	2. Percent serious violations -Safety -Health
<b>Review Procedures</b>	1. Percent violations vacated
	2. Percent violations reclassified
	3. Percent penalty retention

*Note: The measures are broken into 3-month, 6-month, 12-month, and 24-month columns, each of which is further sorted into federal and state columns.*

3. MARC. For State Plans operating Consultation programs under 23(g), mandated consultation activities will be tracked on a quarterly basis using the MARC. Significant issues identified through the use of MARCs should be discussed in quarterly meetings and reflected in the annual evaluation report.

- B. Manual Reports. State Plan states and federal OSHA generate reports that compile quantitative and qualitative data. This is done as a means for conducting self-monitoring (the states) or oversight (federal OSHA). These manual reports can be reviewed as a means for gaining a broad perspective of a state's program and include:

- State Internal Evaluation Program (SIEP) Audits

- FAME Report
  - State OSHA Annual Report (SOAR)
  - Regional Annual Consultation Evaluation Report (RACER)
  - Consultation Annual Project Report (CAPR)
  - On-site Monitoring Report
  - State-generated data related to state-specific strategic goals.
1. SIEP Audit. A state's program for comprehensive evaluation of its internal operations is a critical component of the monitoring system. Providing that mandates are met, states have the flexibility to design and implement programs that will fit each individual state's needs and personnel resources. These evaluations may be developed in conjunction with the Annual Monitoring Plan (see Section V.B.3 of this chapter).
    - a. Each state must periodically conduct reviews of its activities under the plan, focusing on key issues and areas of concern to the state.
    - b. The program must provide for integrity and independence in conducting evaluations.
    - c. States must maintain documentation of their internal evaluations and make it available for review by federal OSHA Monitors. Requests for materials (i.e. FOIA requests) that are not in federal OSHA files will be referred to the individual state for a decision on availability based on the state's own laws.
  2. FAME Report. FAMEs are, in and of themselves, comprehensive documents that review the State Plan's activities over a given year, and are useful tools for the quarterly monitoring conducted by federal OSHA. See [Chapter 7](#) for a comprehensive description of the FAMEs.
  3. SOAR. The SOAR is a state-generated document that reviews the state's progress in meeting goals outlined in the 23(g) grant application (see [Chapter 7](#) for further details on the SOAR).
  4. Regional Annual Consultation Evaluation Report (RACER). The RACER is a comprehensive report compiled by the Region to review the State Plan's progress related to consultation activities.
  5. CAPR. The CAPR is compiled by the state to monitor goals outlined in the 21(d) grant application.
  6. On-site Monitoring Report. This is an OSHA report that is generated biannually as a product of consultation review.
- C. Documents and Logs. Other sources of information for evaluating the selected issues are

documents that are readily available for general use and logs that are routinely prepared and shared. Examples of such documents and activities are as follows:

1. Annual Performance Plans. Annual Performance Plans are prepared by the State Plan and identify strategies for achieving the State Plan's goals as stated in its Five-Year Strategic Plan (see [Chapter 5](#), Basic Principles of Strategic and Performance Plans).
2. Section 23 (g) Grants. Each State Plan's grant application contains both the financial data and program narrative, including the State Plan's strategic and performance goals (refer to [Chapter 5](#) for detailed information).
3. State Operational Procedures and Policies. Any and all documents pertaining to the State Plan's operational procedures and policies are relevant to the monitoring process.
4. Automatic Tracking System. This database contains records of State Plan actions, including responses to federal actions, such as new or revised standards and Federal Program Changes (FPCs). It includes information on the following areas:
  - a. State standards development and promulgation
  - b. State Plan response to FPCs
  - c. State-initiated program changes
  - d. Complaints About State Program Administration (CASPs)
  - e. Variances
5. Corrective Action Plans (CAPs). CAPs are actions that have been agreed to between the State Plan and the RO for correcting a deficiency in the State Plan's program. CAPs are part of the FAME process and result from this annual review (see [Chapter 7](#) for further information on CAPs).
6. SAMM Codebook. The codebook that describes the SAMM is a source for interpreting and understanding the SAMM.
7. Additional State Information. Additional state information, such as state records, legislation, and other documents, may be useful.

D. Case File Review. As part of the analysis of state performance, federal OSHA Monitors may review State Plan case files (such as, but not limited, to files pertaining to inspections, consultation, whistleblower activities, complaints) at any time during the evaluation period. The purpose of case file reviews is to ensure that the State Plan's policies and procedures are being followed, to inform the State Plan of areas for improvement, and to develop CAPs. Case file reviews are conducted routinely in the following four circumstances:

- FAME. FAME guidance may include a requirement to conduct case file reviews (see Chapter 7);
- Verification of a State Plan's CAP. Case files may be reviewed in an effort to verify that a CAP item has been appropriately addressed;
- Special Studies. At OSHA's discretion, case files may be reviewed to evaluate an issue or concern; and
- CASPA. In following up on a CASPA, case file review is often conducted.

Case file reviews are conducted as needed and to the extent that automated data do not provide an adequate basis for analysis of an issue. In order to ensure an effective process and enlist State Plan participation, opening and closing conferences need to be held with the State Plan.

Case file review activity will differ in accordance with the demographics of the population, the information being sought, and, when directed by the National Office (NO), guidelines established for review criteria for each evaluation period. Federal Monitors will take into account these differences within their State Plan and conduct case file reviews in accordance with these variables.

1. Scope of Review. The scope of review will depend upon the issue being analyzed and may encompass the entire case file(s) or be limited to a specific subject within certain case file(s). For instance, FAME guidance might include case file reviews of whistleblower cases to evaluate states' procedures, or a Region could conduct case file reviews for timely abatement.
2. Selection of Case Files. The selection of case files will be based on the issue to be analyzed. CASPAs, for example, could focus on one specific case file, while other reviews, such as analysis of timely abatement, would require random sampling of case files.
  - a. Random Sampling. In case file review processes that do not focus on one specific case file, the Federal Monitor must ensure that cases are randomly selected. This can be achieved by using a random numbers table or some other objective method. Random numbers tables can be accessed by conducting Internet searches (that is, Google 'random numbers table' or a

similar term). For each case file review, a different random numbers table needs to be accessed to ensure that the generation of numbers is truly random.

To account for the possibility of missing case files, there should be more randomly selected case files than necessary for the sample size. For instance, for sample sizes of less than 50, a good guideline would be to randomly select at least five additional case file numbers. For sample sizes of 50 or more, randomly select at least 10% more case file numbers (that is, if the sample size is 100, randomly select 110 case file numbers).

[Appendix E](#) provides further information on procedures for random sampling.

4. Fatalities. Case file reviews involving fatalities frequently include all closed fatality case files.
5. Employee Interviews. As part of a case file review, there may be circumstances for which it is beneficial to conduct interviews of state employees. Interviews are to be conducted at a reasonable time and place, in coordination with the State Plan and Federal Monitors.
6. Documentation of Findings. The Federal Monitor must document the findings regarding each case file reviewed and also the conclusions reached regarding program impact based on the analysis of all the case files reviewed. The Federal Monitor will hold a closing conference to ensure information is shared with the states to the extent needed to explain findings. State Plans also need to be provided with information on the specific case files that were found to be problematic. This will give the State Plan the opportunity to correct misinformation, refute the allegation, or address the problem (see note below).
  - a. Trends v. Isolated Incidents. Federal Monitors must flag trends that could have an impact on State Plan effectiveness and consult with the Office of the Regional Administrator regarding significance (see ALAE below). A trend is observed when there is a general tendency regarding issues, such as improper documentation of case files, lack of next-of-kin letters, inappropriate sampling methods, increase or decrease in penalties, and other such issues for which case files are evaluated. An isolated incident is a one-time event, an unusual occurrence, or a spike in data and may be included in the FAME Report as an observation (versus a finding) to be tracked by the Region going forward.

Note: In some circumstances, an isolated event will rise to a level of significance that warrants a finding where it is determined that it could impact State Plan effectiveness. For example, the single observation of the use of the incorrect sampling media could serve as the basis of a



finding.

- b. ALAE. In consultation with the Office of the Regional Administrator, the Federal Monitor will review trends and other concerns uncovered during case file review to determine if State Plan effectiveness is diminished. In such cases, the trend or concern is to be listed as a finding in the FAME Report and tracked via a CAP.

Note: For consistency, Federal Monitors can utilize an Access database tool for documenting enforcement case file review. Other similar Access programs can be utilized for other types of reviews, such as consultation and whistleblower case files.

7. Interpretation of Results. The case file activity for a general review should be focused on issues which, if found across the population, would result in a finding. Isolated instances of inadequate documentation or improper classification in a case file do not indicate an overall problem and would not be noted in the annual report. Conversely, if there are numerous instances of procedures not being followed, occurrences of improper classification, inadequate documentation, or other concerns found throughout the case file review, then the issue(s) would be noted and included in the annual report, along with recommendations for corrective action and follow-up review during the next evaluation period.
- E. Field Monitoring. When the review of automated reports, documents, and the other monitoring techniques listed above are inadequate as a basis for analyzing an issue, Federal Monitors may join state compliance personnel conducting on-site activities in an accompanied visit. Additionally, Federal Monitors may attend relevant meetings and hearings, such as training sessions, cases before the review board, workplace retaliation hearings, and public advisory committee meetings to satisfy the determined needs of the monitoring activity.
1. Selection of Sites or Meetings for Federal Monitoring. The scope of the review will determine the criteria used in selecting the sites or meetings to which the Federal Monitor will accompany state personnel.
    - a. The Region must notify the State Plan of its intentions in advance.
    - b. The Region and the State Plan will work collaboratively to identify sites or meetings that the Federal Monitor will attend and may include worksites previously visited by the State Plan.
  2. Accompanied Visit Procedures. During accompanied visits, Federal Monitors should observe the following procedures:
    - a. Effects on Individual Performance. Accompanied visits are not intended to evaluate the performance of individual compliance officers, as this is

the responsibility of state program management. If, however, an accompanied visit suggests that the practices of a particular compliance officer are not consistent with adopted policies and procedures, the Federal Monitor must inform the appropriate state manager of these practices.

- b. Observed Violations. If a Federal Monitor observes an apparent standard violation that would normally result in the issuance of a serious or willful citation, and the state compliance officer has failed to note it, the Monitor must privately advise the compliance officer of the violation prior to their departure from the work site.
    - If the state compliance officer agrees to document the apparent violation and identifies it to the employer, no further action is required at the work site.
    - If the state compliance officer disagrees with the Federal Monitor's assertion that there is a violation of a standard, and an agreement cannot be reached between the compliance officer and Federal Monitor, appropriate management personnel for both the State Plan and OSHA should be notified.
    - For an apparent imminent danger, OSHA and the State Plan must agree on whether to remove employees from risk prior to leaving the work site.
    - For an apparent serious or willful violation, OSHA and the State Plan must reach agreement as soon as practical, but in all cases in time for the State Plan to, where such a determination is made, document the apparent violation and identify it to the employer prior to issuing citations.
  - c. Personal Safety. Any time a Federal Monitor accompanies a state compliance officer on a site visit, the Federal Monitor must observe the same safe work practices that a federal compliance safety and health officer observes while performing inspections, including safe driving practices.
3. Documentation of Findings. At the conclusion of each accompanied visit, the Federal Monitor must document all pertinent information regarding the inspection, such as date, place, establishment inspected, and inspection ID number. The documentation must describe the methods used, findings, and recommendations made. The Federal Monitor must also document any other issues that have an impact on the program. All documentation must be maintained for a period of three years, along with the documentation of the

quarterly discussion at which the analyses were discussed.

- F. Special Studies. Special studies are a tool that can be used to evaluate the status of a particular issue. They are directed by the NO or RO and can be targeted to a specific State Plan or to all State Plans. Special studies can be conducted at any time during the monitoring period as deemed necessary by the NO or RO. Guidance for conducting special studies will be provided and is dependent on the topic being evaluated.

#### IV. Quarterly Monitoring.

- A. Quarterly Monitoring Discussions. Quarterly monitoring discussions are at the core of the State Plan and Consultation Program monitoring and evaluation processes. Regions are required to hold joint quarterly discussions with enforcement and consultation. Any issue of concern to either party may be discussed at these meetings. Quarterly discussions can take place in-person or via telephone.
1. Purpose. Quarterly monitoring discussions should cover ongoing State Plan performance in all program areas. Quarterly discussions ensure that monitoring activities do not occur exclusively at the end of the year and provide a forum for integrated discussion of all program areas. To this end, all appropriate staff – program administration, enforcement, and compliance assistance – should be involved in the quarterly discussion process. Communication is not limited to the quarterly monitoring discussions. Informal discussions, working sessions, and other meetings for a variety of purposes, including development of Strategic and Annual Performance Plans, should be held as needed.
  2. Scheduling. Sharing of information and conducting joint reviews of State Plan performance goals on a quarterly basis will permit early identification of potential performance problems or issues and also facilitate the annual evaluation process. The availability of quarterly data, the extent of any preliminary review needed, and submission deadlines for Annual Performance Plans and evaluation reports should be taken into consideration when scheduling quarterly discussions.
  3. Recommended Schedule and Focus of Quarterly Monitoring Discussions.

Quarterly Discussion	Timing of the Meeting	Focus of the Meeting
First	October-November	<ul style="list-style-type: none"><li>• Discuss end-of-year data for the previous fiscal year.</li><li>• Agree upon the Annual Monitoring Plan and the completion date for the SIEP.</li><li>• Review the details of and make any necessary minor adjustments to the State Plan's Annual Performance Plan.</li><li>• Coordinate the annual evaluation process and begin discussing evaluation reports for the previous fiscal year.</li><li>• Prepare the SOAR.</li></ul>
Second	January-February	<ul style="list-style-type: none"><li>• Review first quarter performance and mandated activities data to assess the State Plan's year-to-date progress toward its annual performance goals.</li><li>• Discuss any additional issues that have arisen or were identified in the Annual Monitoring Plan.</li><li>• Prepare and complete evaluation reports for the previous fiscal year.</li><li>• Discuss any additional issues.</li></ul>
Third	April-May	<ul style="list-style-type: none"><li>• Discuss second quarter data, assessing the State Plan's year-to-date progress toward its annual performance goals.</li><li>• Discuss any additional issues that have arisen or were identified in the Annual Monitoring Plan.</li><li>• Begin discussing the goals and strategies to be included in the following year's Annual Performance Plan.</li><li>• Discuss any additional issues.</li><li>• Discuss the FAME.</li></ul>
Fourth	July-August	<ul style="list-style-type: none"><li>• Discuss third quarter data, assessing the State Plan's year-to-date progress toward its annual performance goals.</li><li>• Discuss status of the grant application and Performance Plan.</li><li>• Discuss any additional issues that have arisen or were identified in the Annual Monitoring Plan.</li></ul>

- a. Discussion Topics. As stated above, ongoing communication between the State Plans and OSHA is essential, and the quarterly meetings are a focal

point of those discussions. Prior to meeting, the RO and the State Plan will agree on an agenda. As a courtesy, any documents and reports which will be discussed during the quarterly meeting should be shared between the State Plan and OSHA at least five days prior to the meeting being held. This should allow both parties the appropriate time for document review. Examples of relevant discussion topics include:

- Action items from previous meetings
- Progress in meeting annual performance goals
- Review of mandated activity reports
- Status of federal and State Plan Strategic or Annual Performance Plans
- Agreement on the issues to be covered by state internal evaluations
- State internal evaluation findings
- Effect of state policies and procedures on state program administration
- Status of State Plan responses to prior evaluation reports (CAPs)
- Progress on monitoring activities set out in the Annual Monitoring Plan
- Ongoing grant monitoring
- State consultation activities and measures
- State Plan responses to FPCs
- Standards developments, both state and federal
- Legislative initiatives, both state and federal
- Coverage issues
- Upcoming state and federal training courses
- State or federal staffing change(s)
- Staff career development and training
- Updates on compliance assistance and cooperative programs
- Follow-up on general commitments made during previous conference
- Ongoing CASPA investigations
- Best practices developed and implemented
- Any other issues of concern to either party
- Discussion of special topics, such as jurisdiction or interactions with other public agencies

C. SAMMs. Review of the SAMM data occurs during quarterly meetings (see Section III.A.1.d of this chapter for pre-determined reference levels). When utilized appropriately, variations in SAMM data should be addressed and should prevent any surprises at the time of the annual review. The information below provides guidance for use of SAMMs in discussion with the states.

1. Initial Review. An initial review of the SAMM data is conducted. Any potential problem found during the initial review should be assessed to determine its significance and the amount and type of attention it should

receive. Both federal and state reviewers must explore the cause and extent of data that fall outside the performance guides.

- a. The initial review should fully address the question of data accuracy to be entirely certain that the issue is not one of erroneous performance data or erroneous historic data.
- b. The initial review should also determine the extent to which the issue has already been assessed through the SIEP.
- c. Designated federal and state managers should discuss their findings and ideas about the significance of any performance variations and discuss what action should be taken.

2. Discussion of Findings. Findings and preliminary conclusions regarding any performance variations in the SAMMs should be presented. Corrective courses of action should be discussed, if appropriate.

- a. Depending on the size of the variation and its potential impact on the program, single-instance variations may be monitored for another quarter to see if they indicate an emerging trend.
- b. Some performance variations may represent performance problems; others may represent data anomalies; and still others may signal the eventual need to reset a measurement standard or guide.
- c. If the review indicated a first-time, three-month performance variation from the guide or standard or a statistically insignificant performance variation, additional review need not be automatic.
- d. The fact that a performance variation occurs for the first time does not necessarily rule out further analysis. These circumstances call for the application of professional judgment.

3. Further Review. If additional analysis is appropriate, OSHA will take the lead in analyzing data concerning a mandated activity. Data collection and review of data should be a joint effort, where practical. The data sources to be used and the method of evaluation should be discussed at the quarterly meeting, as should issues of data accuracy, where appropriate.

D. Documentation. The OSHA Regional representative will ensure that a written record will be maintained for each quarterly monitoring discussion indicating the date, location, those in attendance, a summary of the significant issues discussed, and the conclusions reached. Commitments made by either party, such as to supply information or assistance, should be documented and followed up by the appropriate parties. The party responsible for recording the discussion (either federal or state personnel) will provide the written record to the other party within 30 working days of the discussion. The federal OSHA representative must provide a draft copy of quarterly monitoring discussion reports to the state for review.

**V. Developing an Annual Monitoring Plan.**

The Annual Monitoring Plan provides the framework for federal review of the state's program throughout the year. This is the document from which agenda items for quarterly discussions will be drawn. At a minimum, an Annual Monitoring Plan should be developed prior to or during the first quarterly meeting (see Section IV above).

At a minimum, the Annual Monitoring Plan identifies the issues to be evaluated, establishes the schedule for the evaluation, and assigns responsibility for the evaluation. The level of detail in the Annual Monitoring Plan is a matter to be decided by the Region and the state, and need not be extensive. It may also contain detailed procedures and a framework for ongoing assessment of the State Plan's progress toward meeting the goals agreed to in the Annual Performance Plan and the grant agreement, and for ensuring the continuing effectiveness of the state program as it relates to mandated activities. The Annual Monitoring Plan may be adjusted at any time during the evaluation period, with the agreement of both the state and the Region, to reflect newly-identified issues for evaluation or the results of analyses already underway.

- A. Timing. The Annual Monitoring Plan should be developed prior to or at the first quarterly discussion of each evaluation year. The Annual Monitoring Plan should be closely aligned with the State Plan's Annual Performance Plan. (The SIEP may be developed in conjunction with the Annual Monitoring Plan.)
- B. Content of the Annual Monitoring Plan. The Annual Monitoring Plan should include, as a minimum, the following:
  - 1. The schedule for monitoring activities, including the evaluation period; a schedule for quarterly discussions; a schedule for the start and completion of analyses of evaluative items (such as the items listed under "Discussion Topics" in Section IV of this chapter); and a schedule for the preparation and submission of evaluation reports.
  - 2. Assignment of Monitoring Responsibilities. The Annual Monitoring Plan should clearly define roles and responsibilities for quarterly discussions, including the federal office responsible for monitoring, the name of the Federal Monitor, and by whom and how needed documentation will be provided.
  - 3. SIEP Audit. The SIEP audit is an integral part of the monitoring process; therefore, it should be incorporated or referenced in the Annual Monitoring Plan (see Section III.B.1 of this chapter), and findings of a state's required internal evaluation program should be discussed at the quarterly meetings. This plan must be made available to the Region upon request. A state's analyses of issues in its SIEP audit may form the basis for the Region's findings in its own evaluation report.



4. CAPs. The status of CAP items needs to be followed during the quarterly meetings. (The State Plans should include the CAPs in their evaluation; however, if the CAPs are not included as part of the audit process, the Annual Monitoring Plan should include these.)
5. Strategic and Annual Performance Goals. The Annual Monitoring Plan should describe how State Plan performance data will be collected and analyzed. Frequently, this will be specified in the State Plan's Annual Performance Plan and can be relied upon for collection and analysis of data.
  - a. Developmental Activities. For any annual performance goals that reflect developmental activities (for which no quantitative data are available), such as the implementation of Emphasis Programs or the creation of survey instruments, the Annual Monitoring Plan should state the information that will be required to assess progress on these activities. It should also state the anticipated schedule for submission and review of documents. Except where it is not feasible, progress on goals should be reviewed and documented quarterly.
  - b. Effectiveness Related to Mandated Activities. Any federally-mandated activities that are not covered by annual performance goals, together with other issues that federal OSHA and the State Plan agree to evaluate during the year, should be included in the Annual Monitoring Plan. The Annual Monitoring Plan should also specify how those issues are to be addressed. For example, they may be addressed by:
    - Assurances from the state of the continuation of effective procedures;
    - State Internal Evaluation;
    - Review of SAMM, MARC, SIR, and any other relevant automated reports; or
    - Analysis by Federal Monitors by means of other evaluation tools described herein.
  - c. Work Plans. In some cases, a work plan describing the evaluation protocol may be developed for issues to be analyzed by federal OSHA. Work plans should contain, at a minimum, the following:
    - Issue to be analyzed;
    - Evaluation methodology, including the method of data selection and data criteria;
    - Assignment of responsibility for analysis; and
    - Timeframes for analysis.

## **VI. Monitoring Against Annual Performance Plans.**

Annual Performance Plans are prepared by the State Plan and are also useful for evaluating the state's program. Annual Performance Plans identify the activities and strategies to be undertaken by the State Plan during that fiscal year in order to achieve the State Plan's goals as stated in their Five-Year Strategic Plan (see [Chapter 5](#), Mandated Activities - Grant Application). Federal OSHA approval of a state's annual grant document, of which the Annual Performance Plan is a part, indicates agreement on the terms of the plan.

- A. Annual Performance Plans must include the indicators (i.e., outcome-level versus activity-level data) that will be used to evaluate a State Plan's performance against its goals. Sufficient documentation of the performance indicators to be used must be provided by the state to enable OSHA to determine whether the state's performance measurement system is sufficient for evaluating State Plan performance. Responsibility for collecting and transmitting performance data is as follows:
  - 1. The State Plan collects, analyzes, and provides data on performance results to federal OSHA for those performance goals that are unique to the state's measurement system. The State Plan may use the OSHA data system to measure achievement of state-specific goals when data are available.
  - 2. Federal OSHA provides data on performance results to states on those areas of emphasis which are the same as federal OSHA's, even if the states have different injury, illness, or industry targets.
- B. Performance data should be jointly reviewed by the State Plan and federal OSHA on at least a quarterly basis. Any problems or deficiencies in either the collection of data or in achieving performance results must be discussed during the quarterly discussions.
- C. End-of-year evaluations of State Plan performance will focus on the results achieved by the State Plan compared to the goals identified in the State Plan's Annual Performance Plan, which was submitted with the grant application.

The Assistant Secretary may, at any time, request further review of findings.

## Chapter 7 Federal Annual Monitoring Evaluation (FAME) and Annual Reports

### **I. Introduction.**

This chapter describes the FAME process and the annual reports that are utilized to capture State Plans' activities and progress. The main purpose of the FAME process is to analyze, on an annual basis, a State Plan's performance to determine whether it is continuing to maintain its at least as effective (ALAE) status and to meet the mandatory regulatory requirements of 29 CFR Parts 1902, 1953, and 1956. Making an ALAE determination is a complex process which involves reviewing many different aspects of a State Plan. To complete the FAME process successfully, there must be collaboration and effective communication between the State Plans and OSHA. Although OSHA has a statutory responsibility under the OSH Act to ensure that all State Plans are operating at least as effective as OSHA, worthwhile monitoring assists a State Plan in achieving its strategic goals by identifying issues early and promptly addressing them.

Although the FAME process has evolved over the years, the mission to reduce workplace injuries, illnesses, and fatalities has remained the same. All parties must stay focused on the commitment to achieving the shared mission. State Plan performance is measured against its own approved policies and procedures, established performance goals which reflect its specific conditions and priorities, and agreed-upon enforcement measures. The FAME process should have the flexibility to address unique situations, as well as differences, among State Plans. Open and continuous communication is essential to conducting a successful evaluation. State Plans are encouraged to participate in all phases of the evaluation directly with OSHA and/or through their own State Internal Evaluation Program (SIEP).

### **II. Annual Reports.**

Evaluating a State Plan is an ongoing process that includes the review of data from a variety of relevant sources throughout the annual evaluation period. The State OSHA Annual Report (SOAR), the FAME Report, and the Corrective Action Plan (CAP) are the three annual reports used to document the results and progress of a State Plan's activities performed during the evaluation period.

#### **A. SOAR.**

At the conclusion of each federal fiscal year, a State Plan must prepare a progress report outlining accomplishments with respect to its Annual Performance Plan. The report must be detailed enough to provide an accurate assessment of the activities and results accomplished since the SOAR and shall be a source of information used for the FAME Report. State Plans that cover both the public and private sectors may combine the summary of the fiscal year accomplishments in the SOAR. For Privacy Act reasons, the SOAR should not include the names of personnel, specific case numbers, or company names.

1. SOAR Development and Review Process.

State Plans must submit a draft SOAR to the Region, typically between December 1st -15th following the end of the fiscal year. The State Plan shall be notified of the specific due date of the draft SOAR. Once the SOAR is received from the State Plan, the Region shall complete a review and provide feedback to the State Plan on any areas of deficiency. The feedback shall be provided in sufficient time for the State Plan to make necessary changes. The final SOAR shall be submitted to OSHA's Directorate of Cooperative and State Programs (DCSP) no later than January 15th of the following year (see [Appendix F](#) for the SOAR template).

B. FAME Report.

OSHA established a two-year cycle for the FAME process – a comprehensive FAME year and follow-up FAME year. Data from all relevant sources shall be utilized and reflect objective and consistent analyses. In order to leverage both OSHA and State Plan resources, a comprehensive FAME of the State Plan shall be conducted every other year, and the follow-up FAME conducted each year between. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME.

1. The Comprehensive FAME.

This evaluation of the State Plan shall include a review of case files, as well as an assessment of the State Plan's enforcement performance (enforcement statistics), in each mandated activity or program element, progress in addressing outstanding items from the previous year's FAME Report, and progress in meeting its annual and strategic performance goals. On-site evaluations and case file reviews may be conducted every year as necessary to ensure that adequate monitoring is achieved (see [Appendix G](#) for the comprehensive FAME Report template).

2. The Follow-Up FAME.

This evaluation of the State Plan is a follow-up to the comprehensive FAME. Conducting an on-site evaluation and case file review is optional; however, if follow-up CAP items or information received during the previous year (e.g., State Activities Mandated Measures (SAMM) data points, CASPAs) warrants a more comprehensive approach, conducting an on-site evaluation and case file review may be necessary. The focus of the follow-up evaluation is the State Plan's response to the recommendations from the previous year's comprehensive FAME

Report, including their progress in addressing the correction action items specified in their CAP, as well as an abbreviated assessment of the State Plan's enforcement performance. However, depending on the issues in a particular State Plan, the evaluation may also include additional areas (see [Appendix H](#) for the follow-up FAME Report template).

3. Drafting the FAME Report.

The FAME Report must accurately and clearly summarize the findings of the year's recent FAME and present a concise assessment of State Plan performance. The FAME Report should explain all findings in sufficient detail for the reader to understand the analysis, but should not burden the reader with unnecessary details about internal State Plan procedures unless the internal State Plan procedure is a causal or contributing factor to a finding or observation. The substance of the FAME Report should stand on its own, with appropriate references to the supporting materials in the appendices. The report should clearly allow the reader to understand the issues, analyses, and the conclusions contained therein.

Acronyms must be spelled out the first time they are used in the report. Since these are public documents, with the exception of State Plan administrators or directors only, names of State Plan personnel shall not be used, nor should names of companies, representatives of workers, or inspection case file numbers. Names of companies involved in high-profile cases may be mentioned if the state has already issued a press release identifying the company. Reports written by a team should be edited to ensure that there are no contradictions among the various sections and that writing styles are uniform. The State Plan is encouraged to provide corrective action information to the Region whenever its inclusion would enhance the quality of the FAME Report.

4. FAME Report Development and Review Process.

The FAME Report shall be drafted and a copy provided to the State Plan for review no later than March 15th. Once the State Plan has reviewed the draft FAME Report, comments and any areas of concern shall be submitted to the Region within two weeks to allow the Region to make any necessary amendments. Once the Region has made any necessary changes based on the State Plan's feedback, the draft FAME Report shall be submitted to DCSP no later than March 31st. DCSP shall review the draft report and provide comments to the Region within 45 days. The Region shall then finalize the FAME Report based on the

comments provided by DCSP. Any significant changes, such as changes to findings, recommendations, or observations, must be shared with the State Plan prior to submitting the document to DCSP. DCSP, in coordination with the Office of the Assistant Secretary, will finalize the FAME Reports no later than June 30th. The final version of the FAME Report shall then be submitted, in electronic format to the State Plan along with instructions for completing a CAP. Upon receipt of the FAME Report, the State Plan may provide a formal written response, which shall be maintained with instructions with the FAME Report.

5. FAME Report Findings, Recommendations, and Observations.

Report findings shall be limited to those issues that warrant corrective action by the State Plan to ensure it is ALAE. Assessment of State Plan performance must include a review of progress and achievement of the State Plan's strategic and annual performance goals. Issues that question the final approval status of a State Plan shall be noted as a formal finding and be included in the executive summary. Recommendations shall be closely linked with the FAME findings and should clearly identify expectations and the desired outcome. All findings and recommendations shall be reviewed by DCSP to ensure consistency across the Regions.

If data supporting an area of concern is limited, or if the concern cannot yet be determined to impact the effectiveness of the State Plan, it shall be noted in the FAME as an observation. Observations shall include a Federal Monitoring Plan to be completed by OSHA. OSHA must take action to either close the observation or convert it to a formal finding within three years. Previous findings may also be converted into observations where a review of available information warrants such a reclassification. An observation template to assist OSHA in tracking and monitoring the status of observations is included in both the follow-up FAME Report and comprehensive FAME Report templates.

To the degree possible, a discussion with the State Plan regarding areas of concern that may result in a finding or observation should be held during the on-site review's closing conference. An additional closing discussion shall be held (via teleconference or in-person) after the Region has determined all proposed findings and observations. If the State Plan objects to any findings or observations, further discussion may be held in an attempt to reach an agreement though OSHA makes the final determination regarding what is included in the report.

a. Recommendation Categories.

Recommendations as a result of the FAME findings should be categorized into the following areas:

- i. Open – Recommendation that still requires corrective action and shall be reviewed during the next FAME.
- ii. Awaiting Verification – Recommendation for which corrective action has been taken but the outcome has not yet been verified and shall be carried over as a recommendation to the next report.
- iii. Converted to observation – a previous finding that has been converted to an observation for monitoring in the next FAME.
- iv. Completed – Recommendation for which corrective action has been taken and verified.
- v. Closed – Recommendation that has been mutually agreed upon as not impacting the effectiveness and for which the Region does not want to formally monitor as an observation.

6. Special Studies.

Special studies serve as a tool for the Regions to address specific concerns and to obtain specific information on a State Plan at any time during the evaluation period. The results of the Regional special study are captured in the FAME Report. Additionally, the NO may also conduct a special study during the year. Instructions will be issued separately by the NO and the results captured separately from the FAME Report. [Chapter 6](#) provides detailed information on conducting on-site evaluations, case file reviews, and special studies.

C. Corrective Action Plan (CAP).

The CAP shall include all new and combined findings and recommendations from the most recent FAME Report. The State Plan shall develop a CAP in collaboration with OSHA to ensure that acceptable corrective action is planned. The course of action described shall clearly indicate what steps the State Plan shall take and the anticipated date of completion. Conducting regular follow-up discussions on the status of CAP items is a critical element of the process (see [Appendix I](#) for the CAP template).



1. CAP Planning, Development, and Review.

The CAP must be developed so that the actions are specifically tailored to the recommendations.

a. CAP Planning and Development.

The CAP shall provide clear, detailed responses for each finding and recommendation and is completed jointly by the Region and the State Plan. Throughout the evaluation period, the Region shall keep the State Plan informed of any items that may result in a finding and recommendation. This will allow the State Plan an opportunity to evaluate the information, make any needed corrections, or formulate a viable CAP early in the process.

b. CAP Review.

The Region, in collaboration with DCSP, will review the CAP and provide feedback, as appropriate. The Region's review shall include analysis of whether the proposed action will produce the desired result. The Region shall negotiate with the State Plan appropriate revisions of any items that may not be explicit and precise about intended action and anticipated outcome. DCSP shall review each CAP for concurrence and notify the Region whether the CAP can be considered final. In a case of non-concurrence, the Region shall work with the State Plan to revise the CAP or obtain additional information and submit the revision or information to DCSP within the specified timeframe.

2. Due Date.

Within seven working days of issuance of the final FAME Report to the State Plan, the Region shall negotiate with the State Plan a completion date for submission of revised CAP items. The draft CAP is due to the Region from the State Plan by July 31st of each year (30 days after issuance of the final FAME Report). The Region and the State Plan have 30 days to make any additional changes to the CAP prior to submitting the draft CAP to DCSP by August 31st annually. The final CAP is due to DCSP by September 30th of each year.

FAME Process Time table	
Deliverable	Due Date
Draft SOAR to Region	Dec 1-15 <sup>th</sup> annually
Final SOAR to DCSP	January 15 <sup>th</sup> annually
Draft FAME Report to State Plan	March 15 <sup>th</sup> annually
Draft FAME Report to DCSP	March 31 <sup>st</sup> annually
Final FAME Report Issued to State Plan	June 30 <sup>th</sup> annually
Final FAME Report Posted on DCSP Public Webpage	Two weeks after issuance
Draft CAP to Region	July 31 <sup>st</sup> annually
Draft CAP to DCSP	August 31 <sup>st</sup> annually
CAP Finalized	September 30 <sup>th</sup> annually
National Office Special Study Issuance	September 30 <sup>th</sup> annually (if initiated)

## Chapter 8 Modifying and Withdrawing State Plan Approval

### I. Introduction.

Section 18 of the OSH Act allows states an opportunity to administer their own occupational safety and health programs upon receipt of federal approval of a State Plan. Section 18(f) of the OSH Act provides the authority for OSHA to withdraw this approval if the Secretary finds that “in the administration of the State Plan there is a failure to comply substantially with any provision of the State Plan.” The procedures for accomplishing a change in the approval status of a State Plan are set out in 29 CFR 1902 (reconsideration of final approval) and 29 CFR 1955 (withdrawal of the State Plan).

### II. Reconsideration of State Plan Final Approval.

#### A. Circumstances Warranting Reconsideration.

In granting final approval of a State Plan under Section 18(e) of the OSH Act, OSHA formally and legally relinquishes its concurrent authority for issues covered by the State Plan. Modification of a State Plan’s final approval may be necessary to allow OSHA enforcement authority in the state (see [Chapter 3](#) of this manual, “Establishing a State Plan”). In State Plans that are still in the initial approval phase, federal concurrent enforcement authority remains in effect and an increase in specific federal enforcement authority can be implemented through changes to the Operational Status Agreement (OSA).

OSHA enforcement may become necessary in a State Plan with final approval if the State Plan fails to operate a program that is at least as effective (ALAE) as OSHA in providing workplace protections.

There are two ways this situation may present itself:

1. The State Plan has requested enforcement assistance from OSHA and has agreed to voluntary reconsideration of its 18(e) final approval status; or
2. Through evaluation and monitoring, OSHA has determined that the State Plan is no longer at least as effective, but the State Plan either does not agree with this assessment, and/or does not consent to modification of final approval status. In this case OSHA may decide to pursue involuntary unilateral reconsideration of Section 18(e) final approval.

#### B. Procedure for Reconsideration and Revocation of an Affirmative 18(e) Determination (29 CFR 1902, Subpart D).

In general, reconsidering 18(e) final approval status requires a publication in the *Federal Register* of a notice of the proposed action, the opportunity for public comment and requests for informal hearing, and a publication of the final determination in the *Federal Register*.

If the Assistant Secretary determines that voluntary reconsideration of a State Plan's 18(e) final approval is necessary, the following steps must be taken (with notes addressing involuntary unilateral reconsideration):

1. The State Designee, or his or her representative, must submit a letter requesting federal enforcement assistance and consenting to modification of its final approved status from 18(e) final approval to 18(b) initial approval. The letter should show that the State Plan has political support for the modification and the means to work toward regaining its full enforcement authority in the near future.
2. The Region, the Directorate of Cooperative and State Programs (DCSP), and the Office of the Assistant Secretary (OAS) shall discuss the situation and determine if the requested federal assistance is warranted and feasible. This evaluation shall be based on the State Plan's letter, recent State Plan performance (to include FAME Reports), and other monitoring efforts.

**Note:** Before initiating involuntary unilateral reconsideration of 18(e), the Region, DCSP, and OAS must all be in agreement that the State Plan is not at least as effective as OSHA, that federal enforcement is necessary within the state, and that since the State Plan will not cooperate with this course of action or take action to become ALAE, unilateral modification of the State Plan's final approval status is warranted to allow federal concurrent enforcement. In this case, there would not be a letter from the State Plan, but there may be a letter from OSHA to the State Plan explaining the planned course of action and reasons behind said action.

3. The Region, working closely with the State Plan, shall draft an OSA that will delineate the areas of coverage for the state and federal OSHA while the State Plan is operating under 18(b) initial approval status.

The OSA should:

- clearly define the revised areas of enforcement for both the state and federal OSHA during the period of concurrent jurisdiction;
- include a restatement of the areas already under federal jurisdiction that will continue to be covered by federal OSHA (i.e., USPS, maritime, federal enclaves);
- identify the process to address imminent danger situations;

- provide guidance to clarify instances in which enforcement authority is unclear, using federal OSHA to enforce by default until a determination is made; and
- include a provision addressing workplace retaliation claims and restating that these claims will, as always, be dually covered by both federal OSHA and the state.

**Note:** In the case of involuntary unilateral reconsideration of 18(e) final approval status, the state may not be as willing to work with federal OSHA to agree upon the terms of an OSA. The Region should try to work with the state to come to an agreement on enforcement authority. If the Region encounters difficulties, or a State Plan wishes to withdraw the entire plan, the Region should seek assistance and additional direction from DCSP and OAS.

4. A Notice of Proposed Rulemaking (NPRM) is required to make the requisite changes to the part of the Code of Federal Regulations that codifies the level of federal enforcement authority within a State Plan. DCSP is responsible for composing a first draft of the NPRM and then working closely with the Office of the Solicitor (SOL), the Region, and the Deputy Assistant Secretary (DAS) to make revisions as necessary through the informal review process. DCSP should consult the Directorate of Standards and Guidance (DSG) early in the drafting process to ensure that *Federal Register* formatting and submission guidelines are followed. The Region should share drafts with the state for informal review and feedback.

**Note:** In the case of involuntary unilateral reconsideration, it is not appropriate to share drafts of the NPRM with the state or any other interested party.

The NPRM must be cleared internally through DCSP, SOL, the Directorate of Administrative Programs (DAP), DSG, and OAS. DCSP must also draft a cover memorandum for the Assistant Secretary's transmittal of the rule to the Secretary of Labor. This package needs to be routed through the Department of Labor (DOL) Controlled Correspondence Unit (CCU) and ultimately must be cleared through the Office of the Assistant Secretary for Policy (ASP) and the Office of Management and Budget (OMB). ASP will submit the package to the *Federal Register*, but DCSP shall act as the guardian of the document and is responsible for following up on the clearance process in the NO and within DOL to ensure timely submission to the *Federal Register*.

The NPRM shall:

- Include a summary of the situation and relevant background information about the State Plan and past performance;
- State that the Assistant Secretary is proposing reconsideration of the final approval status of the State Plan to modify the State Plan's status back to that of initial approval;

- Refer to the public docket (by the number created by DCSP prior to publication of the NPRM) that will contain a copy of the OSA and any other relevant documentation appropriate for public viewing; and
- Provide for a public comment period of 35 days. (Comments shall be reviewed primarily by DCSP and SOL to determine if a substantial issue is raised that warrants an informal public hearing. The final determination about a hearing is left to the Assistant Secretary's discretion (see [29 CFR 1902.49](#)).

Within 10 days of publication of the NPRM, the affected State Plan shall also provide and publish reasonable notice within the state containing the same information as that contained in the NPRM. Typically, this may take the form of a press release or notice posted on the State Plan's website.

5. An informal public hearing may be held if the Assistant Secretary finds that substantial objections have been filed (see 29 CFR 1902.49(c), 1902.50). The Assistant Secretary may also decide to hold an informal hearing on his or her own initiative.

**Note:** In the case of involuntary unilateral reconsideration, the State Plan may be likely to raise substantial issues and request a hearing.

6. Following the close of the comment period, a Final Rule is required to be published to officially modify the State Plan's status. The Final Rule shall address all comments in the preamble and announce the Assistant Secretary's decision about whether or not to modify the State Plan's final approval status back to initial approval status. If the Assistant Secretary has decided to modify the State Plan's final approval status, the Final Rule shall also implement the appropriate changes to the regulations at 29 CFR 1952 to codify the modification.

DCSP is responsible for drafting the Final Rule and then working closely with SOL, the Region, and the DAS to make revisions as necessary through the informal review process. DCSP should consult DSG early in the drafting process to ensure that *Federal Register* formatting and submission guidelines are followed. The Region should also share drafts with the State Plan for informal review and feedback.

**Note:** In the case of involuntary unilateral reconsideration, it is not appropriate to share drafts of the final rule with the state or any other interested party.

The Final Rule must be cleared internally through DCSP, DSG, DAP, SOL, and OAS. DCSP must also draft a cover memorandum for the Assistant Secretary's transmittal of the rule to the Secretary of Labor. This package

must be routed through CCU and ultimately must be cleared through ASP and OMB. ASP will submit the package to the *Federal Register*, but DCSP shall act as guardian of the document and will follow up on the clearance process in the NO and DOL to ensure timely submission to the *Federal Register*.

Within 15 days from publication in the *Federal Register*, DCSP must complete and submit a Congressional Review Act form to both the Senate and House of Representatives.

7. Upon publication of the Final Rule, a press release may be issued. Typically, in the case of voluntary modification, the state will issue a press release. Joint local outreach opportunities should be explored to provide information to the public on the transition and resulting changes to coverage in the state.
8. Upon publication of the Final Rule, DCSP will update federal OSHA's State Plan webpage to reflect the change in approval status and to set forth federal OSHA's and the State Plan's new areas of coverage throughout the state.. The webpage should also include a link to the NPRM and Final Rule and should briefly explain the background for this change.

C. Effect of Modification/Reconsideration of Final Approval.

As discussed above, the modification of a State Plan's 18(e) final approval status back to initial approval status results in the State Plan once again being subject to concurrent federal enforcement authority. Modifying the State Plan's final approval status authorizes OSHA to carry out an enforcement program to supplement that of the State Plan, including independent federal or joint state and federal inspections resulting in issuance of appropriate federal citations. However, modifying a State Plan's final approval status does not affect the state's basic Plan approval or the state's legal authority to enforce state occupational safety and health standards in the state's workplaces. The modification would leave the state's federally-approved State Plan completely in place, and would simply reinstate federal OSHA's authority to supplement state enforcement. The regulations state that this reinstatement of concurrent federal enforcement authority shall be for a reasonable period of time until the Assistant Secretary either deems the Plan once again able to meet the criteria of 18(e) or determines that the Plan, or a portion thereof, should be withdrawn (see 29 CFR 1902.52(b)).

- Addendum of Milestones toward Regaining 18(e).

When a State Plan's final approval status has been modified to initial approval status, the expectation is that the state and Region will work out a schedule of milestones to bring the State Plan back to a level where it is once again eligible for reinstatement of 18(e) final approval and is no longer in need of federal enforcement assistance. This mutually agreed upon schedule must be reviewed by DCSP and DAS/OAS. Reinstatement of 18(e) final approval does not automatically occur upon meeting the milestones. The State Plan still



needs to go through the procedures for 18(e) determination, culminating in the Assistant Secretary's decision on final approval, as set forth in 29 CFR 1902.

### III. Withdrawal of State Plan Approval.

#### A. Circumstances Warranting Withdrawal of a State Plan.

Withdrawal of a State Plan under 29 CFR 1955 is very different from reconsideration of a State Plan's final approval under 29 CFR 1902. Generally, withdrawing a plan means total dissolution of the plan, or a portion thereof, including termination of the associated grant and enforcement authority. The procedures for withdrawal, as set forth in 29 CFR 1955, generally apply to both full coverage and public sector-only State Plans. The regulations present several situations where withdrawal of a State Plan may be considered (see 29 CFR §1955, Subpart A). These situations fall into three main categories: voluntary withdrawal, involuntary withdrawal, and petition by outside party for withdrawal.

##### 1. Voluntary Withdrawal – Whole or Partial.

A state may, at any time before or after final approval of the State Plan under §18(e) of the OSH Act, voluntarily withdraw its entire State Plan (see j§1955.3(b)) or a reasonably separable portion of the State Plan (see §1955.3(c)) by notifying the Assistant Secretary in writing, setting forth the reasons for such withdrawal. Such notification shall include language terminating the state's application for related grants under §23(g) of the OSH Act).

Upon receipt of the state's notice of voluntary withdrawal, the Assistant Secretary shall publish a *Federal Register* Notice (FRN) of withdrawal of approval of the State Plan, or portion thereof.

- Example: If a State Plan wishes to move from a full coverage State Plan to a public sector only State Plan, this would be accomplished through the partial withdrawal process under 29 CFR 1955.3(b).
- The term "separable" for purposes of withdrawal (both voluntary and involuntary) is defined by the regulations as an industrial, occupational, or hazard grouping which is at least as comprehensive as a corresponding grouping contained in 29 CFR 1910, provided that the Assistant Secretary has determined that other industrial, occupational, or hazard groupings are administratively practicable (see 29 CFR 1902.2(c), 29 CFR 1955.3(c), 29 CFR 1955.2(a)(10)).
  - The example of "separable" provided in the regulations is "occupational health" (see 29 CFR 1955.3(c)).

- In addition, there has been at least one instance where it was deemed administratively practicable to treat temporary labor camps as a “separable” issue.
- According to 29 CFR 1956.24, no industrial or occupational issues may be considered a “separable” portion of a public sector-only State Plan because public sector-only State Plans must cover all employees of state and local agencies in a state whenever a state is constitutionally able to do so.

## 2. Involuntary Withdrawal – Whole or Partial.

In general, the regulations provide for several circumstances in which the Assistant Secretary may withdraw approval of an entire State Plan or a portion of a State Plan, when it is determined that the portion being withdrawn is reasonably separable from the remainder of the State Plan in a manner consistent with § 1902.2(c), defining the scope of a State Plan.

### a. Developmental State Plans.

The regulations set forth the two circumstances where initiating proceedings for withdrawal of all or part of a developmental State Plan may be in order (see 29 CFR § 1955.3(a)).

- i. Where the Assistant Secretary determines that the state has not substantially completed the developmental steps of its plan within three years (see 29 CFR § 1902.2).

Examples:

- The state has failed to substantially complete the development and adoption of necessary administrative regulations and guidelines for an at least as effective as enforcement program (see § 1955.3(a)(1)(i)).
- The state has failed to substantially complete the development and adoption of all or a majority of the occupational safety and health standards covered by the plan and, as such, does not have an at least as effective as enforcement program (see § 1955.3(a)(1)(ii)).
- The state has failed to enact the required enabling legislation for an at least as effective as enforcement program (see § 1955.3(a)(1)(iii)).

- ii. Where the Assistant Secretary determines that there is no longer a reasonable expectation that a State Plan will meet the criterion

involving the completion of developmental steps within three years (see § 1902.3).

Examples:

- The state has failed to enact enabling legislation in the first two years in cases where the remaining developmental steps are dependent on such legislation, and the steps cannot be completed within the remaining one-year period (see § 1955.3(a)(2)(i)).
- The state's enabling legislation has been repealed, or a substantial amendment to the enabling legislation has resulted in a failure to meet the developmental criteria in § 1902.3 (see § 1955.3(a)(2)(ii)).
- The state will not be able to complete the developmental steps within three years (see § 1955.3(a)(2)(iii)).

b. Approved State Plans.

The regulations also state that it may be necessary to initiate proceedings for withdrawal of all or part of an approved State Plan (initial or final approval) when the Assistant Secretary determines that in the operation or administration of a State Plan, or as a result of any modifications to a plan, there is a failure to substantially comply with any provision of the plan, including assurances contained in the State Plan (see 29 CFR § 1955.3(a)(3)).

Examples of Failures to Substantially Comply:

- Where a State Plan, over a period of time, consistently fails to provide effective enforcement of standards (see § 1955.3(a)(3)(i));
- Where the rights of workers are circumscribed in such a manner as to diminish the effectiveness of the State Plan (see § 1955.3(a)(3)(ii));
- Where a state, without good cause, fails to maintain its program in accordance with appropriate changes in the federal program (see § 1955.3(a)(3)(iii));
- Where a state fails to comply with the requirement to maintain a sufficient number of qualified personnel and/or adequate

resources for administration and enforcement of the program (see §1955.3(a)(3)(iv)); or

- Where the Assistant Secretary determines on the basis of actual operations that the criteria in §18(c) of the OSH Act are not being met, that concurrent authority under §18(b) should not be extended, and that final approval under §18(e) should not be given (see §1955.3(a)(3)(v)).

3. Petitions for Withdrawal of Approval for Approved State Plans.

Any interested person, after the initial approval of a State Plan, may petition the Assistant Secretary in writing to initiate proceedings for withdrawal of approval of a State Plan under §18(f) of the OSH Act and 29 CFR 1955.5.

- The petition shall contain a statement of the grounds for the proposed withdrawal, including facts supporting the petition. The Assistant Secretary may request the petitioner to provide additional facts to be added to supplement the petition (see §1955.5(b)(1)).
- The Assistant Secretary may take such other actions as are considered appropriate when considering the petition, including publishing the petition for public comment, holding informal discussions on the issues raised by the petition with the State Plan and other affected persons, or holding an informal hearing in accordance with §1902.13 (see §1955.5(b)(1)).
- Petitions for withdrawal shall be considered and acted upon within a reasonable time. Prompt notice shall be given of the denial in whole or in part of any petition, which shall be accompanied by a brief statement of the grounds for the denial (see §1955.5(b)(2)).
- A denial of a petition does not preclude future action on any issues raised in the petition or any other issues raised regarding a State Plan (see §1955.5(b)(2)).

B. Procedure for Withdrawal: 29 CFR §1955.

1. Notice of Formal Proceeding.

- a. Prior to any notice of a formal proceeding under this subpart, the Assistant Secretary shall by letter provide the state with an opportunity to show cause within 45 days why a proceeding should not be instituted for withdrawal of approval of a plan or any portion thereof. Should the state fail to respond to the notice of proposed withdrawal or fail to show cause why a formal proceeding for withdrawal of approval should not be

instituted, the state shall be deemed to have waived its right to a formal proceeding, and the notice of withdrawal of approval of the State Plan shall be published in the *Federal Register*. (This notice would likely take the form of a Direct Final Rule.)

- b. If the state has not waived its right to a formal proceeding, a notice of proposed withdrawal shall be published in the *Federal Register* and a notice, in the form of a complaint, shall be served on the state in accordance with 29 CFR 1955.11, 15.

This notice requirement applies to both involuntary withdrawals on the Assistant Secretary's initiative, and to petitions for withdrawal.

The notice of formal proceeding shall include:

- A statement on the nature of the proceeding and the addresses for filing all papers;
  - The legal authority under which the proceeding is to be held;
  - A description of the issues and the grounds for the Assistant Secretary's proposed withdrawal of approval;
  - A specified period, not less than 30 days after publication of the notice in the *Federal Register*, for the state to submit a response to the statement of issues in the notice; and
  - A provision for designation of an Administrative Law Judge (ALJ) under 5 U.S.C. 3105 to preside over the proceeding.
- c. No later than five days after the notice is posted in the *Federal Register*, the state will publish within the state a notice containing a summary of the information in the FRN, as well as the location where a copy of the full notice is available for inspection and public copying. The state shall provide the Assistant Secretary two copies of the state's notice in accordance with 29 CFR 1955.10(b)(3).
- d. No later than 30 days following publication of the notice of proposed withdrawal in the *Federal Register*, the state shall submit a response, to include:
- A statement of the items in the notice that are being contested; and
  - A brief statement of the facts relied upon to include whether the use of a witness is intended.

e. A copy of the notice of the proceeding shall be referred to the ALJ.

2. Other Technical and Legal Requirements of 29 CFR 1955.

There are a myriad of further legal and technical requirements set forth in the regulations pertaining to the formal proceeding to withdraw a State Plan, or a portion thereof. The regulations include provisions governing the manner of service and filing, computation of time, determination of parties, and provision for written comments, consent findings and summary decision, preliminary conference and discovery, and the hearing (see 29 CFR 1955.10 - 40). The Region, DCSP, and SOL shall work together closely throughout the formal proceeding before an ALJ, to ensure compliance with all of the regulatory requirements.

3. Tentative Decision.

- After the transcript of the hearing is made available, each party may file proposed findings of fact, conclusions of law, and proposed orders.
- The ALJ makes the tentative decision, and it must include findings of fact and conclusions of law supporting the decision, reference to any material fact based on official notice, and the appropriate rule, order or denial thereof. The decision must also be served on the parties.
- Any party must be afforded an opportunity to file exceptions to the tentative decision (30 days). Opportunity to file objections to such exceptions can also be offered.
- If no exceptions to the ALJ's tentative decision are filed, the ALJ's decision shall be published in the *Federal Register* as a final decision (see §1955.45).

4. Final Decision.

- After a review of the exceptions and the record, the Secretary of Labor issues a final decision on the matter. The final decision may affirm, modify, or set aside in whole or in part the decision of the ALJ. This decision shall be served on all parties and shall become final unless the Secretary grants a stay pending judicial review.

5. Judicial Review.

- Only a final decision by the Secretary is a final agency action for purposes of judicial review. A decision by the ALJ that becomes final through lack of filed exceptions is not deemed a final agency action (see § 1955.46).
- The State Plan may obtain judicial review of a decision of the Secretary in accordance with Section 18(g) of the OSH Act.

C. Effect of Withdrawal of a State Plan.

1. Once a State Plan has been withdrawn, all workplace health and safety coverage throughout the state reverts back to OSHA; therefore, public sector employees in the state are no longer covered. The RO would assume enforcement responsibilities in the state just as it would for any federally covered state.
2. After receiving the notice of withdrawal, the State Plan shall cease to be in effect, and the provisions of the OSH Act and related federal regulations shall apply within the state.
3. In accordance with Section 18(f) of the OSH Act, states may retain coverage of any case started before receipt of the notice of withdrawal.
4. The notice of withdrawal shall serve as notice of termination of all related grants authorized under Section 23(g) of the OSH Act.



Chapter 9  
Complaint About State Plan Administration (CASPA)

**I. Introduction.**

- A. A CASPA is an oral or written complaint about some aspect of the policy, operation, or administration of a State Plan made to OSHA by any interested person or representative of such person or groups of persons, e.g., affected employers, employees, labor or management organizations, interest groups, the media, or the general public. The CASPA process provides a mechanism for employers, employees, and the public to notify federal OSHA of specific issues, systemic problems, or concerns about a state program. (See OSHA regulations at 29 CFR § 1954.20 to § 1954.22 - Complaints About State Program Administration.)
- B. State Plans must include information in their state posters about the availability of federal monitoring of State Plan performance through the filing of CASPAs with federal OSHA (see 29 CFR 1952.10).
- C. CASPAs do not provide a formal review mechanism for individual complainants who seek to overturn administrative or judicial determinations made by the state. Because State Plans operate under authority of state law and are administered by state agencies, federal OSHA has no authority to directly affect a change in the outcome of a particular state administrative or judicial action.
  - 1. Complainants must have exhausted all administrative remedies available to them through the state's processes before a CASPA will be accepted for investigation of their complaint.
  - 2. The results of a CASPA investigation may lead to recommendations for changes in the state's policies and/or operating procedures that were the source of the complaint in order to prevent its recurrence. It may also include re-investigation or processing of the issue.

**II. Confidentiality.**

In accordance with the *Federal Privacy Act* (5 U.S.C. 552a), OSHA regulations at 29 CFR 1954.21 require that the identity of any CASPA complainant be kept confidential.

- A. All CASPAs must be assigned a sequential number in the following format: State- FY-sequential #, e.g., TX-2012-01, in order to maintain this confidentiality.
- B. The name of the complainant must be withheld in any contact with a state concerning a CASPA and in any record published, released, or made

available unless a waiver has been signed. No records will be maintained by the complainant's name.

- C. A written waiver of confidentiality must be obtained from the complainant, if in the judgment of the Regional Administrator (RA) the waiver would facilitate investigation of the CASPA. Even if the complainant makes clear that his or her identity need not be kept confidential, a signed waiver should be obtained (see [Appendix J](#) for a sample Name Release Form).

### **III. Filing a CASPA.**

CASPAs may be filed orally or in writing and should specify with as much particularity as possible the aspect(s) of the policy, administration, or operation of the State Plan which is believed to be inadequate. Although an oral complaint will be accepted, complainants are encouraged to document their specific concerns in writing to ensure full consideration. The complaint may relate to a specific state action, such as an enforcement inspection or workplace retaliation investigation, or it may reflect a broader or more generic criticism of State Plan policy or administration. CASPAs will be forwarded to the RA, who is responsible for oversight of the State Plan that is the subject of the complaint.

### **IV. Determining Whether an Investigation is Warranted.**

- A. Generally, within five calendar days of receiving a CASPA, a determination will be made whether the CASPA warrants investigation and if the complaint meets the definition of "Sensitive" CASPA. The complainant and the State Plan will be notified, as appropriate. If an investigation of the CASPA is warranted, the investigation is carried out using the methods and tools for further analysis presented in [Chapter 6, Tools for Federal Oversight and Quarterly Monitoring](#).
- B. Imminent Danger. If a CASPA alleges that a situation of imminent danger exists, an immediate determination of whether the condition described may constitute an imminent danger situation shall be made, and if so, the State Plan will be notified to ensure that appropriate enforcement action is taken immediately. Once the imminent danger situation is addressed, further investigation of the CASPA allegations may still be warranted, and the complainant will be kept informed of the continuing CASPA investigation. The State Plan must inform OSHA as to how the imminent danger allegation was resolved so that OSHA can notify the complainant of the action regarding the imminent danger situation.
- C. CASPA Investigation Not Warranted. When it has been determined that an investigation is not warranted, the complainant must be notified in writing (see [Appendix J](#) for letter template). The reasons for the determination must be specific and the complainant offered the opportunity to request reconsideration of that decision if additional information can be provided that could result in a

different decision. The appropriate redactions of any information that could identify the complainant must be made prior to sending a copy to the State Plan. The following are conditions where an investigation may not be warranted:

1. The complainant has not exhausted the available administrative remedies provided for by state regulations and procedures. For example, if a CASPA involves a State Plan inspection that is under contest and the state's action is not final, the contest could resolve the complaint. The complainant should be notified that once all available remedies are completed, if the result is unsatisfactory, the complainant may then file a CASPA. Informal contact with the State Plan to advise them that an issue has been raised may be appropriate.
2. The CASPA pertains to a matter that is not within the jurisdiction of the State Plan, or the issues have no impact on safety and health and the state's ability to operate its State Plan. An example would be a CASPA merely suggesting a different method, procedure, or policy.
3. Similar complaint(s) of the same nature has/have already been investigated, making additional investigation unnecessary. If the similar CASPA is still open at the time of the filing, the complainant may be added to the existing CASPA.
4. The CASPA allegations are vague, or the content of the complaint does not sufficiently explain the activity that is alleged to be inadequate. This could include general accusations, such as "the penalties are too low" or that "violations are classified improperly."
5. The CASPA recommends revisions to standards that include requirements more stringent than those enforced by OSHA or not included in federal OSHA standards. More stringent requirements or those not included in federal OSHA standards may be investigated if other ancillary issues arise due to the difference in the State Plan's standards.
6. The complainant changed their mind after filing the CASPA and signed a negotiated settlement agreement.
7. The events pertaining to the complaint occurred so long ago that an investigation in the context of current conditions would be meaningless or impossible. For example, if the complaint deals with a State Plan case file that has been destroyed in accordance with an acceptable records retention policy, investigation would not be possible.
8. It is a dually-filed 11(c) workplace retaliation complaint that will undergo a federal review as described in Section VIII of this chapter. A duplicative CASPA investigation is not required for such complaints. Note, however,

that a complaint about the handling of a state 11(c) workplace retaliation investigation from a non-federal public sector employee will be considered under CASPA procedures since there is no dual-filing option in those cases.

9. A complaint pertaining to an authorized action by the State Plan.

- D. If there is not sufficient information to determine whether to investigate or to confirm the issues of the CASPA, the complainant may be asked for additional information to aid in making a decision. OSHA retains authority for determining whether the CASPA will be accepted for investigation. If information sufficient to warrant an investigation is not obtained, the complainant will be notified that the case is being closed due to insufficient information, but that they can re-file should more information become available.
- E. Anonymous CASPAs will be investigated only if there is sufficient information to proceed with an investigation and the allegations raise reasonable concern about a State Plan's performance. It is not necessary to inform the State Plan that the complaint was made in an anonymous manner.

**V. CASPA Investigation Warranted.**

- A. Letter to the Complainant. Once it is determined that a CASPA investigation is warranted, the complainant shall be notified that the CASPA has been accepted for investigation and that the complainant may be contacted for additional information. The letter should state that a written response detailing the results of the investigation and any corrective action required will be sent upon completion, generally within 90 days (see [Appendix J](#) for Sample Acknowledgement Letters to CASPA Complainant). For complex CASPAs taking longer than 90 days to investigate, periodic updates should be provided to the complainant.
- B. Automated Tracking System (ATS). When a CASPA is accepted, the information must be entered into the ATS. Please go to <http://intranet.osha.gov/fso/LAP/fso/osp/index.html> for more information regarding the use of the ATS.
- C. Opportunity for State Investigation and Response. A letter to the state describing the complaint shall be provided without revealing the identity of the complainant (see [Appendix J](#) for template letter). The State Plan will be provided 30 days to respond to the allegations, and the State Plan's timely response must be considered as part of the investigation and included in the determination letter. If the state needs more than 30 days to respond, they may contact OSHA and request up to an additional 15 days to respond. Issues for which a response from the State Plan would be most helpful may be specifically requested.

- D. Regional Investigation. The Regional investigation may begin at any time, including prior to receipt of the State Plan response. Case file reviews; review and analysis of relevant data; interviews with the complainant, State Plan officials and staff, or others involved; and review of State Plan policies and procedures for effectiveness, including their historical development and application, may all be a part of the CASPA investigation. In some situations, the information provided in the state's response, once verified through data and/or case file review and discussions with the state, may provide a sufficient basis for a determination on the CASPA. A copy of all materials provided by the state shall be maintained in the CASPA file along with all other documentation used during the investigation.
1. The investigation should not only determine if the State Plan is following its own policies and procedures, but also whether those policies and procedures in question are at least as effective as federal OSHA's in structure and in application.
  2. The investigative phase should be completed in a timely manner, generally not more than 60 days to allow ample time to finalize and send letters to the state and complainant within the required 90 days. Any delays must be explained in the CASPA investigation file and report. Both the complainant and State Plan should be provided regular status updates throughout the investigation.
  3. Where the CASPA investigation validates that the outcome in a specific State Plan inspection is not appropriate (i.e., the final state action is less protective than if the inspection was conducted by OSHA; does not follow State Plan policies or procedures; or, relied on State Plan policies or procedures that are not at least as effective as OSHA's), the State Plan must take corrective action.
    - a. Corrective actions may include reopening the case (statutory timeframes permitting), opening a new inspection (follow-up), or other appropriate action. When it is not feasible to reopen an inspection case, alternative means to address the hazard(s), e.g., an advisory letter to the employer, should be utilized.
    - b. For workplace retaliation related CASPAs, the State Plan should have a procedure in place to allow them to reopen the investigation. Under 29 CFR §1902.43(a)(2), OSHA retains authority for 11(c) workplace retaliation cases even after a State Plan has received final approval (see Section VIII of this chapter for more information).
    - c. Other remedies as appropriate (i.e. complaints, etc.).
- E. Conclusion of Investigation.

1. Discussion with the State Plan. Immediately after a CASPA investigation has been completed, the preliminary investigative findings and conclusions, proposed recommendations, and possible corrective actions will be discussed with the State Plan. The State Plan should be allowed the opportunity during the discussion to present its views and provide additional information or analysis.
2. Determination Letters. The conclusions of the CASPA investigation are presented in letters to the complainant and to the State Plan, which together serve as the agency's formal investigation report and are issued concurrently (see [Appendix J](#) for letter templates). CASPA determination letters should contain an appropriate level of detail as to the reasons for the findings and conclusions. The letters should document in detail each allegation, the specific monitoring undertaken to investigate, the factual findings, the conclusions, and the recommendations for corrective action, if any. Conclusions should be fully explained and supported by the facts and presented in a manner that allows the reader to understand the underlying reasoning. Recommendations to the State Plan should specify the outcome that is expected and may specify actions that will achieve this outcome, but they should not be so prescriptive as to limit the state's options. A timeframe for completion of corrective actions should also be established. A draft determination letter should be shared with the State Plan prior to finalization to ensure accuracy of the information presented, especially as it relates to the State Plan investigation.
3. Response to Complainant. Within 90 days from receipt of the complaint, a determination letter should be provided to the complainant. In most cases, this letter should come from the monitoring official (e.g. Area Director; Assistant Regional Administrator).
  - a. The response letter must advise the complainant of their right to request reconsideration of the determination by the RA.
  - b. Upon receipt of a request for reconsideration, the RA's review should be completed within 30 days and should include consideration of the CASPA file and all information developed during the investigation. The RA may reopen the case and/or seek National Office (NO) input, as appropriate. The decision by the RA is final and not subject to further review.
4. Response to State Plan. A determination letter should be provided to the State Plan in conjunction with the determination letter to the complainant. The letter to the State Plan should be similar to the letter to the complainant but must not contain information that would reveal the identity of the complainant. A copy of the response to the complainant, as well as any reconsideration response, must also be provided to the State



Plan, but identification of the complainant must be redacted to maintain the confidentiality of the complainant's identity.

5. State Plan Action. The state response to the CASPA findings should be required within a specified timeframe, usually 30 days, and must include a Corrective Action Plan, where applicable, with specific responses to the recommendations and a final timetable for the corrections. The State Plan must also modify its procedures to prevent recurrence of the problem and conduct training with staff, where applicable.
6. Monitoring. The State Plan's corrective actions shall be monitored to ensure completion through follow-up visits, review of submitted Plan Changes documenting required changes in policy and procedure, etc., and may require periodic status reports from the State Plan.
7. State Plan Objection. If the State Plan disagrees with any aspect of the investigation, including the recommendations, it may file a written objection with the RA. If the State Plan refuses to take corrective action, the RA will consult with the Directorate of Cooperative and State Programs (DCSP).
8. Completed CASPAs. Completed CASPA information shall be updated in the ATS CASPA Log. Additionally, a copy of both the State Plan and Complainant response letters on every CASPA investigation shall be sent to DCSP.
9. FAME Report. The annual evaluation of each State Plan must contain summary information about all CASPAs investigated during the evaluation period. Information should not identify the complainant or any employers or others to whom the CASPA may relate. Details should be provided under the appropriate program element on cases where corrective actions are outstanding. Outstanding CASPA findings and recommendations should also be incorporated into the FAME findings and recommendations. CASPAs found invalid or otherwise without substantive findings may be merely listed by topic.

## **VI. Significant CASPAs.**

Although it is important that all CASPAs be fully and appropriately investigated in a timely manner, significant CASPAs often raise issues that the Assistant Secretary should be aware of and/or may be asked about, and therefore, require a greater level of awareness throughout the agency.

- A. Significant Determination. A CASPA may be considered "significant" if the CASPA:



1. Raises issues that warrant broader agency awareness regarding such matters as:
    - a. The overall adequacy of a State Plan administration or effectiveness,
    - b. Criticism of OSHA's monitoring,
    - c. New or unique hazards, or
    - d. Major accidents or investigations;
  2. Was filed by a national labor or management organization, member of Congress, or national public interest group;
  3. Concerns a fatality or catastrophe; or
  4. Relates to an issue that has drawn substantial or national media interest or raises issues that the Assistant Secretary should be aware of and/or may be asked about, and therefore, requires a greater level of awareness throughout the agency.
- B. RA Decision. CASPAs that meet one or more of the criteria set forth in Section VI.A of this chapter should be evaluated by the RA to determine whether it is appropriate to handle as a significant CASPA.
1. If the RA believes the CASPA should be considered significant, the Region should handle the CASPA using the procedures set forth in Section VI.C of this chapter.
  2. If the RA believes the CASPA should not be considered significant, the Region should notify DCSP and the Office of the Assistant Secretary (OAS) of this decision. The memo should include:
    - a. The State Plan against which the CASPA was filed;
    - b. The CASPA number;
    - c. Date the CASPA was received;
    - d. The name or affiliation of the complainant;
    - e. Criterion/a from Section VI.A that triggered the significant CASPA review; and
    - f. Rationale for a non-significant determination.

DCSP or OAS should notify the RA within five working days if they disagree with the RA's decision.
  3. CASPAs may be reclassified as significant at any time should the circumstances surrounding the CASPA change; for example, increasing media attention to the situation.

- C. Significant CASPA Procedures. CASPAs identified by the RA as significant should follow the procedures set forth in Section V of this chapter with the following modifications:
1. NO Notification. Upon determination that a CASPA is significant, the Region should notify DCSP and OAS. The incoming complaint and any other available information should be shared at this time.
  2. NO Review. Upon completion of draft letters to the complainant and State Plan, as described in Section V.E.2 above, the letters should be submitted to DCSP to initiate NO review.
    - a. DCSP will review the draft letters and, in conjunction with the Region, make revisions, where appropriate.
    - b. DCSP will advise OAS that draft letters have been completed. OAS will determine whether to provide an additional level of review prior to issuance.

## VII. Sensitive CASPAs.

Although it is important that all CASPAs be handled in a manner that is sensitive to the identity of the complainant and the serious nature of the complaint allegations, “Sensitive” CASPAs allege unique or unusual issues that make it inappropriate to process the complaint using the standard process as set forth in Section V of this chapter.

- A. Sensitive Determination. A CASPA may be considered “sensitive” if the CASPA:
1. Alleges improper or illegal acts by State Plan management or employees;
  2. Alleges administrative improprieties; or
  3. Contains allegations that make it difficult to protect the identity of the complainant.
- B. RA Decision. CASPAs that meet one or more of the criteria set forth in Section VII.A of this chapter should be evaluated by the RA to determine whether it is appropriate to handle as a sensitive CASPA.
1. If the RA believes the CASPA should be considered sensitive, the Region should handle the CASPA using the procedures set forth in Section VII.C.
  2. If the RA believes the CASPA should not be considered sensitive, the Region should notify DCSP and OAS of this decision. The memo should include:

- a. The State Plan against which the CASPA was filed;
- b. The CASPA number;
- c. Date the CASPA was received;
- d. The name/affiliation of the complainant;
- e. Criterion/a from Section VII.A that triggered the sensitive CASPA review; and
- f. Rationale for a non-sensitive determination.

DCSP or OAS should notify the RA within five working days if they disagree with the RA's decision.

3. If the RA determines that it is necessary for an impartial review, staff from another Region may be detailed to assist in the investigation.
4. Where allegations include improper or illegal acts by State Plan management or employees, or administrative improprieties of a serious nature, the issues should be referred to the Office of the Inspector General (OIG).

C. Sensitive CASPA Procedures. CASPAs identified by the RA as sensitive should follow the procedures set forth in Section V of this chapter with the following modifications:

1. NO Notification. Upon determination that a CASPA is sensitive, the Region should notify DCSP and OAS. The incoming complaint and any other available information should be shared at this time.
2. State Plan Investigation. State Plans shall not be afforded the opportunity to review and respond to CASPA allegations as set forth in Section V.C of this chapter. Instead, a letter acknowledging receipt of a CASPA designated as sensitive will be remitted to the state. Additionally, OSHA will provide basic information about the allegations to the degree that the information will not damage OSHA's investigation or compromise the complainant's confidentiality.
3. Regional Investigation. Where applicable, care must be taken to ensure that elements of the Regional investigation, such as case file review and employee interviews, do not compromise the complainant's confidentiality.
4. Conclusion of Investigation. All elements of Section V.E of this chapter shall be followed, including affording the State Plan an opportunity to review the draft determination letter to ensure accuracy of the information presented. If a referral to the OIG has been made, the Region should verify that moving forward with the CASPA response will not negatively impact any ongoing investigation.

5. NO Review. Upon completion of draft letters to the complainant and State Plan, as described in Section V.E.2 above, the letters should be submitted to DCSP to initiate NO review.
  - a. DCSP will review the draft letters and, in conjunction with the Region, make revisions.
  - b. DCSP will advise OAS that draft letters have been completed. OAS will determine whether to provide an additional level of review prior to issuance.

#### **VIII. Workplace Retaliation Related CASPAs and Dual-Filing.**

- A. Dually-filed Complaints. Workplace retaliation complaints that were properly dually-filed under both federal 11(c) and state law undergo federal review under Section 11(c) procedures outlined in Chapter 7, Paragraph E of the Federal Whistleblower Investigations Manual. No duplicative CASPA investigation is required for such complaints. If the complainant requests a federal review before the state determination is made, the complainant will be notified that he or she may request the review only after a state determination is made. However, if there is a delay by the State Plan or the State Plan is not performing in a manner consistent with their policies and procedures, the RA may then allow a federal review before the issuance of a state determination.
- B. Complaints about the handling of state whistleblower investigations from non-federal public sector employees will be considered under CASPA procedures since dual-filing is not an option.
- C. If the complaint concerns the state's handling of a whistleblower complaint filed only with the state under its provision equivalent to Section 11(c) of the OSH Act (29 U.S.C. 660(c)), and if the complainant has exhausted all review remedies provided by the state, it should be handled as a CASPA following the investigation procedures in this chapter.
  1. Upon receipt of a CASPA complaint relating to a state's handling of a whistleblower case, it must be determined whether an investigation is warranted following the procedures in Section IV of this chapter. If an investigation is not warranted, the complainant and the state must be notified following the procedures in Section IV. If an investigation is warranted, the complainant must be notified that the CASPA has been accepted for investigation, and a letter will be sent to the state with an opportunity to respond, following the procedures in Section V (see [Appendix J](#) for letter templates).
  2. A CASPA investigation of a whistleblower complaint may result in recommendations with regard to specific findings in the case, as well as future state investigation techniques, policies, and procedures. A review

under CASPA procedures is not an appeal and will not be reviewed by the federal OSHA Appeals Committee; however, it should be possible for the state to reopen a workplace retaliation case for corrective action. If the Region finds that the outcome in a specific state whistleblower investigation is not appropriate (i.e., final state action is less protective than if investigated federally; does not follow state policies and procedures; or relied on state policies and procedures that are not at least as effective as OSHA's policies and procedures), the Region should require the state to take appropriate action to reopen the case or in some manner correct the outcome, whenever possible, as well as make procedural changes to prevent recurrence.

3. State Plans are required under Chapter 1, Section VII (State Impact) of the Federal Whistleblower Investigations Manual to establish a procedure for review of an initial state workplace retaliation case determination, in addition to any state complementary private right of action authority. Complainants will be required to exhaust the state's review remedy before federal OSHA will accept a request for federal review of a dually-filed complaint or of a CASPA regarding a workplace retaliation complaint filed only with the state.
4. State Plans are required to operate an effective program to protect employees who believe they have been discriminated against for exercising their State Plan occupational safety and health rights. This is not a program or authority that may be excluded from the State Plan. Program deficiencies identified during CASPA or other monitoring may result in recommendations for legislative or regulatory changes.

**IX. Timeframes.**

Action	Calendar Days to Complete
Determine CASPA validity/whether investigation warranted, significant or sensitive designation, and notify the complainant and the state.	Five calendar days from receipt
State investigation and response to the Region	Generally 30 days unless an extension is requested in writing or by email and approved by the Region
Regional investigation of "routine" CASPAs, including letters	90 days
Discussion of preliminary findings with the state	Immediately upon completion of investigation
Significant or sensitive CASPAs	90 days for investigation, though a longer investigation period may be required for major issues (NO review and issuance of a determination letter is not included within the 90 day period.)
State response to recommendations and CAP with timetable	Generally 30 days from the issuance of the determination (letter to state/response to complainant)
RA reconsideration	Within 30 days of request from complainant
State objection	Upon receipt

**X. Tracking of CASPAs.**

Immediately upon receipt, information about all CASPAs must be entered into the CASPA log of ATS. This includes any oral or written complaint about state program administration identified as such by the complainant even if later determined not to be a CASPA. All appropriate information, including the final outcome, should be entered into the ATS in a timely manner during the course of the investigation.

**XI. Documentation of CASPA Investigations.**

The amount and kind of information that is collected and analyzed will vary for each CASPA. In many cases, the written determination letters to the complainant and the State Plan may satisfy most of the documentation requirements. In addition to copies of the complaint and all correspondence with the complainant and the state, each case file should contain written documentation of the following (see [Chapter 6](#)):

1. The allegations that were investigated;
2. The information reviewed in the course of investigating the CASPA;
3. An analysis of the allegations and conclusions regarding their validity;

4. Recommended corrective actions and timetables for their implementation;
5. The actions taken by the state and documentation of those actions; and
6. All follow-up actions taken.

**XII. Records Disposition.**

Although in general Regional and Area Office official records on a State Plan and the monitoring activities conducted are considered permanent records and are retained until five years after the State Plan is withdrawn, files on CASPA investigations that result in non-substantive findings may be destroyed after 10 years when obsolete or no longer of any reference value. However, CASPAs which result in findings that require substantive corrective action by the State Plan should be maintained in accordance with the established records disposition schedule.

State Plans should ensure that their records disposition policies provide for retention of documents related to CASPA investigations requiring substantive corrective action and the underlying case files in the same manner.



## Appendix A Definitions

Term	Definition
<b>21(d)</b>	<p>Section 21(d) of the OSH Act of 1970 stipulates that the Secretary shall establish and support cooperative agreements with the states under which employers subject to this Act may consult with state personnel with respect to:</p> <ul style="list-style-type: none"><li>• the application of occupational safety and health requirements under this Act or under State Plans approved under section 18; and</li><li>• voluntary efforts that employers may undertake to establish and maintain safe and healthful employment and places of employment. Such agreements may provide, as a condition of receiving funds under such agreements, for contributions by states toward meeting the costs of such agreements.</li></ul>
<b>23(g)</b>	<p>The Secretary is authorized to make grants to the states to assist them in administering and enforcing programs for occupational safety and health contained in State Plans approved by the Secretary pursuant to section 18 of the OSH Act. The federal share for each state grant under this subsection may not exceed 50 percent of the total cost to the state of such a program.</p>
<b>Activities</b>	<p>The goods or services produced as a result of internal activity or effort on the part of an agency or program (example: conducting inspections, delivering training programs, conducting consultation visits)</p>
<b>Activity-level data</b>	<p>In the absence of outcome-level data, OSHA should review activity-level data to evaluate whether a State Plan has applied sufficient resources and intermediate outcome-level data to evaluate whether the state directed resources to areas where an impact is likely to be made.</p>
<b>Adoption Optional/Encouraged</b>	<p>Instances where Federal Program Changes are minor or short-term and do not require State Plan states to fully adopt the Federal Program Change or modify their plans to be at least as effective as the revision</p>
<b>Adoption Required</b>	<p>A Federal Program Change that requires State Plans to have their own enforcement, standard, policies or procedures that are at least as effective as those required by the Federal Program Change. State Plan submission of a full Plan Change supplement is required.</p>
<b>Annual Performance Goals</b>	<p>Target levels of performance relating to a performance goal for a specific fiscal year (example: reduce fatalities in the construction industry by 3% in FY 2000)</p>
<b>Annual Performance Plan</b>	<p>Annual Performance Plans are prepared by the State Plan and identify strategies for achieving the State Plan's goals as stated in its Five-Year Strategic Plan.</p>
<b>Automated Tracking System (ATS)</b>	<p>The ATS is a web-based system used by OSHA and State Plans to track State Plan responses to Federal Program Changes, State-Initiated</p>

	Program Changes, CASPAs, variances, and standard changes.
<b>Baselines</b>	Statements of current performance levels used as a basis for comparison when assessing progress toward a strategic goal or objective
<b>Complaint About State Plan Administration (CASPA)</b>	Anyone finding inadequacies or other problems in the administration of a State Plan may file a CASPA with the appropriate OSHA Regional Administrator. The complainant's name is kept confidential. OSHA investigates all such complaints, and where complaints are found to be valid, requires appropriate corrective action on the part of the State Plan.
<b>Comprehensive FAME</b>	The Federal Annual Monitoring Evaluation of the State Plan where all required aspects, such as mandatory on-site monitoring and case file reviews are conducted.
<b>Concurrent Enforcement</b>	When federal OSHA and the State Plan both maintain enforcement coverage of workers within the state. . Federal OSHA can then compensate for current deficiencies in the State Plan's enforcement program while allowing the State Plan sufficient time and assistance to improve its performance.
<b>Coverage</b>	In this manual, the term refers to inclusion of an issue in a State Plan or the exercise of federal OSHA authority over an issue in a State Plan.
<b>Developmental Plans 18(b)</b>	A State Plan for an occupational safety and health program that does not fully meet the criteria set forth in 1902.3, Criteria for State Plans.
<b>Developmental Steps</b>	Those items listed after initial approval to be completed by the state within the three-year developmental period.
<b>Dually Filed</b>	A workplace retaliation complaint that is filed with both OSHA and the appropriate State Plan to preserve the option of an investigation and remedy in either system if necessary. (Workplace retaliation complaints that were properly dually-filed under both federal 11(c) and state law undergo federal review under Section 11(c) procedures outlined in Chapter 7, Paragraph E of the Federal Whistleblower Investigations Manual. No duplicative CASPA investigation is required for such complaints.)
<b>Enforcement</b>	Enforcement refers to any investigation of an employer's worksite related to workplace safety and health. Enforcement investigations may be a conducted due to a complaint, referral, or programmed activity such as an emphasis program.
<b>Equivalency Required</b>	A Federal Program Change that requires State Plans to have their own enforcement policies and procedures that are at least as effective as those required by the Federal Program Change. State Plan submission of a full Plan Change supplement is not required.
<b>Evaluation Changes</b>	An evaluation change is a change made to a State Plan when federal OSHA reveals that some substantive aspect of a State Plan has an adverse impact on the implementation of the State Plan and needs revision.
<b>Federal Monitor</b>	A federal staff person responsible for monitoring a state's activities (These individuals may work in a RO or in an AO.)
<b>Federal Program Change</b>	Federal Program Changes modify existing standards or directives issued by OSHA. State Plan states are required either to adopt the

	amended rule or submit their own variation that demonstrates it is at least as effective as the Federal Program Change.
<b>Final Approval 18(e)</b>	The State Plan has met the criteria of section 18(e) of the OSH Act so as to warrant the withdrawal of discretionary federal enforcement.
<b>Follow-up FAME</b>	The Federal Annual Monitoring Evaluation of the State Plan in which certain required aspects of a comprehensive FAME, such as on-site monitoring and case file reviews, are optional.
<b>Indicators</b>	Means of evaluating progress toward achievement of performance goals (example: percent reduction in fatalities in the construction industry).
<b>Jurisdiction</b>	The OSH Act, 29 U.S.C. 651 <i>et. seq.</i> , provides OSHA with the authority to issue and enforce standards and regulations for workplace safety and health. Pursuant to this authority, OSHA established its occupational safety and health standards (29 CFR Parts 1900-1999), which are designed for protecting workers in the workplace.
<b>Mission</b>	A mission statement succinctly identifies what the agency does, why, and for whom, and reminds everyone – the public, the Governor, legislators, the courts, and agency personnel – of the primary purposes promoted and served by the agency.
<b>Observation</b>	A finding and recommendation from previous FAME Reports that have not yet been proven to impact the effectiveness of the State Plan but that the federal State Plan Monitor wishes to continue monitoring for tracking purposes (Depending on the specific issue, previous findings and recommendations may be converted into observations if the federal State Plan Monitor and State Plan agree; however, it will be subject to future monitoring for the following year's FAME Report. Observations must be closed out by three years from the date of issuance.)
<b>Operational Status Agreement</b>	At any time after initial plan approval, when it appears that the State Plan is capable of independently enforcing standards, OSHA may enter into an "operational status agreement" with the State Plan. This commits OSHA to suspend the exercise of discretionary federal enforcement in all or certain activities covered by the State Plan.
<b>OSHA</b>	Federal OSHA is an agency within the Department of Labor whose mission is to "ensure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance." OSHA provides partial funding for and monitors approved State Plan workplace safety and health programs. When "OSHA" is used in this manual, it is assumed to mean "federal OSHA."
<b>Outcomes</b>	<p>Outcomes are the results of a program or activity when compared to its intended purpose. There are two types of outcome measures:</p> <ul style="list-style-type: none"><li>• Primary Outcomes - The ultimate results intended to be achieved by the program activities (example: percent reduction in lost workday injury and illness rates, percent reduction in fatalities).</li></ul>

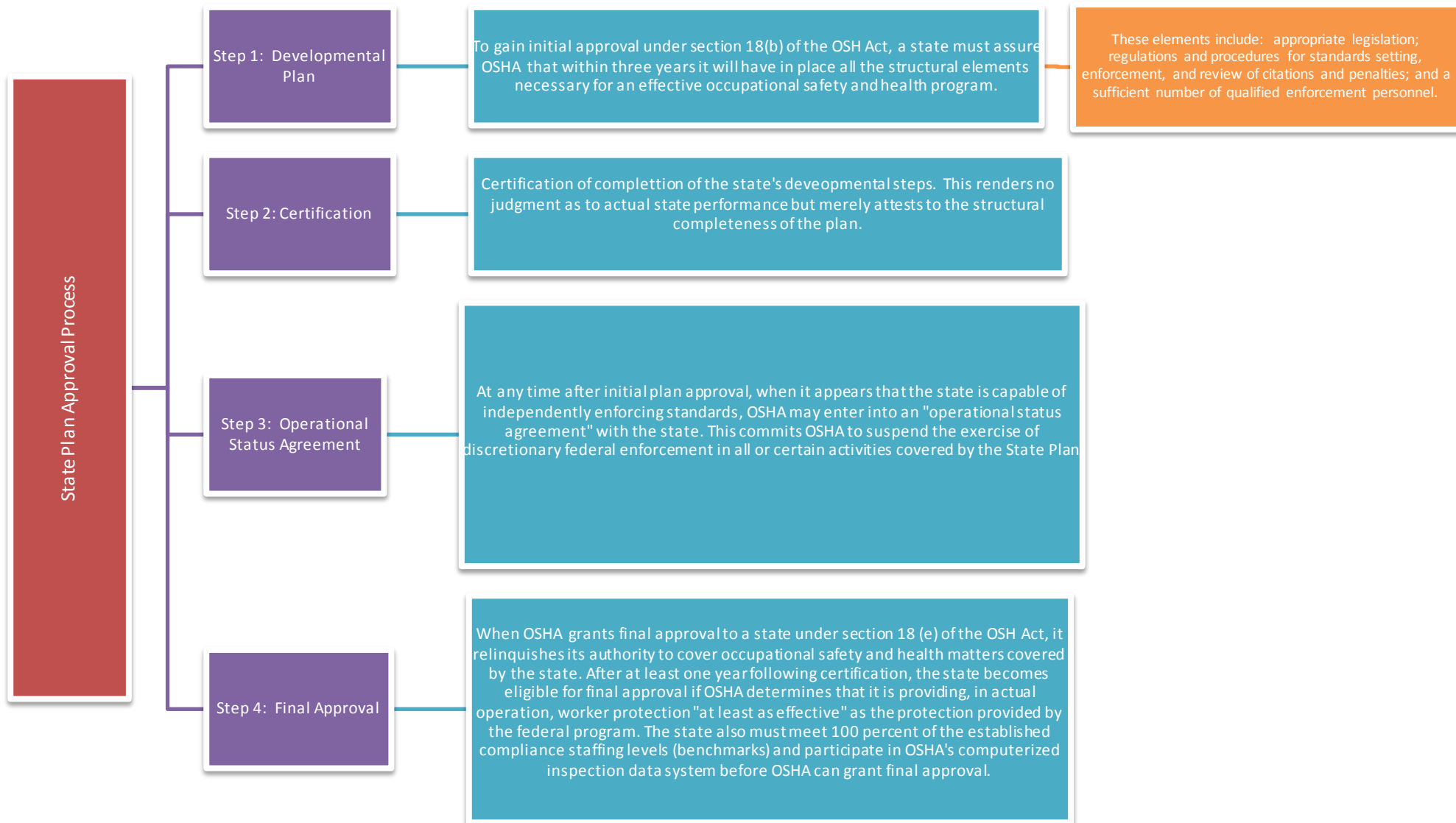
	<ul style="list-style-type: none"> <li>Intermediate Outcomes - Assessments of incremental progress toward primary outcomes; outcomes that lead to the ends desired, but are not ends themselves (example: percentage of inspection visits that result in the identification of targeted hazards).</li> </ul>
<b>Outcome-level data</b>	Information collected to evaluate the capacity of a program to function at a level described in the program plan.
<b>Plan Certification</b>	Acknowledges the completion of all of the developmental steps in a State Plan.
<b>Plan Supplements</b>	Whenever a State Plan responds to an adoption required Federal Program Change with a different State Plan standard, policy or procedure, the State Plan must submit a Plan Supplement that identifies the differences from the comparable federal component.
<b>Performance Goals</b>	Statements of specific long-range performance targets relative to the strategic goal (example: reduce fatalities in the construction industry by 15% by focusing on the leading causes of fatalities (falls, struck-by, crushed-by, and electrocutions and electrical injuries))
<b>Scope</b>	The scope section of a rule, standard, or directive defines who/what is covered by the said rule, standard, or directive.
<b>Sensitive CASPA</b>	A CASPA should be considered sensitive when the complainant is a State Plan employee or in other special situations. The state should not be asked to respond to the complaint but should be notified in general as to the allegations under investigation. These situations include CASPAs that allege improper acts by State Plan management or employees or administrative improprieties.
<b>“Show Cause” Order</b>	A type of court order that requires one or more of the parties to a case to justify, explain, or prove something to the court
<b>Significant CASPA</b>	A CASPA should be considered Significant if, in the Regional Administrator's judgment, it raises issues that warrant broader agency awareness regarding such matters as the overall adequacy of a State Plan, broad criticism of the administration of the program, criticism of OSHA's monitoring, new or unique hazards, major accidents or investigations, etc. In particular, CASPAs from labor or management organizations, members of Congress, or public interest groups; or that concern a fatality or catastrophe; or that relate to an issue of media interest (such as local news articles about problems in a state's handling of an inspection, or one or more articles in national news reports or major media outlets) should be considered significant if they raise issues that the Assistant Secretary may be asked about and/or needs to know.
<b>State</b>	Whenever the term “state” is used in this manual, it means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands. See Section 3(7) of the OSH Act, 20 U.S.C. 652(7), as modified by the Covenant to Establish a Commonwealth of the Northern Mariana Islands, the Compact of Free Association between the Government of the United

	States and the Governments of the Marshall Islands and the Federated States of Micronesia, and the Compact of Free Association between the Government of the United States and the Government of Palau.
<b>State-Initiated Change</b>	An SIC is any change in the State Plan that is undertaken at the state's option or on its own volition and is not necessitated by federal requirements.
<b>State Plan</b>	<a href="#">Section 18 of the Occupational Safety and Health Act of 1970</a> (the Act) encourages states to develop and operate their own workplace safety and health programs. OSHA approves and monitors State Plans and provides up to 50 percent of an approved Plan's operating costs.  There are currently 22 states and jurisdictions operating complete State Plans (covering both the private sector and state and local government employees) and five - Connecticut, Illinois, New Jersey, New York, and the Virgin Islands - which cover public employees only.
<b>State Plan Narrative</b>	The State Plan Narrative is an overall description of the State Plan and all its aspects. The outline for the narrative directs the State Plan to divide its responses to the required issues into two major components- the narrative section and the appendices. In the narrative section, the state is asked to describe or identify how the State plan provides for or addresses the specific Part 1902 or <a href="#">Part 1956</a> requirements. In addition, the outline contains the appropriate cross references to other applicable OSHA requirements so that the state may review these requirements in developing its responses. In the appendices, the state is directed to provide documentation in support of its narrative section responses.
<b>Strategic Goals</b>	Broad statements of the strategic direction an agency wants to take over a five-year term (example: change workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health)
<b>Strategic Planning</b>	The process of assessment, goal-setting, and decision-making that results in an agency envisioning what it hopes to accomplish in the future
<b>Strategic Planning Strategies</b>	The mix of programs and activities that will be used by the state occupational safety and health program to accomplish its mission (example: standards development, inspections, compliance assistance, training and education, outreach)
<b>Vision</b>	A vision is an inspiring picture of a preferred future. A vision is free of time constraints, represents global and continuing purposes, and serves as a foundation for a system of strategic planning.
<b>Workplace Retaliation</b>	Generally, pursuant to section 11(c) of the OSH Act, workplace retaliation refers to employer imposed discrimination, including, but not limited to discharge, against an employee for filing a complaint or instituting any proceeding under or related to the OSH Act. Section 11(c) of the OSH Act states "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to

	testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.” OSHA is required to investigate employee allegations of workplace safety and health-related workplace retaliation. State Plans are required to investigate these same allegations within their state, and may refer to these types of claims using a variety of terms, including discrimination, whistleblower, or workplace retaliation complaints. In addition the State Plan programs providing protection against such allegations may be referred to as anti-retaliation, anti-discrimination, non-discrimination, or whistleblower protection programs.
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## Appendix B State Plan Approval Process





**Appendix C**  
**State Standard Adoption Submission and Review Process**

<i>A state standard is different if:</i>	<i>In which case, the state must:</i>
it contains any differences in requirements,	submit a formal standards comparison (see Chapter 4, Section III.C.1), as well as the same documentation as for an identical standard.

<i>A state standard is identical if:</i>	<i>In which case, the state must:</i>
the only differences reflect a different state numbering system, references, or organizational titles	submit the standards adoption order or promulgation document; a numbering conversion table, if applicable; and a printed or electronic copy of the standard when available.
the only difference is expansion of scope to the public sector	
any differences are purely editorial (including plain language revisions) and do not change the requirements for employers	

<i>When is public comment required?</i>	
<i>If a different or independent state standard:</i>	<i>then:</i>
contains only minor differences in requirements, such as minor work practices	public comment is not required.
contains major differences in requirements or scope (except for coverage of public employees) that OSHA did not previously approve, <i>and</i> additional information is necessary on effectiveness or on product clause issues. (Additional information may be required, for example, when OSHA's internal review determines that the standard appears to specifically apply to products distributed or used in interstate commerce.)	public comment is required, and OSHA must prepare a <i>Federal Register</i> Notice requesting public comment.
contains major differences in requirements or scope, but OSHA determines sufficient information is already available to approve the standard (for example, where the record of state rulemaking contains sufficient information responsive to the requirements for approval of state standards)	public comment is not required.

## **Appendix D**

### **Examples of Well-Written Performance Goals**

#### Five-Year Performance Goals and Annual Performance Goals

Increase activities with community-based organizations that work with vulnerable population groups by 5%.

- Annual Performance Goal for year one- Develop and implement processes and procedures to track 5-year performance goal. Establish baseline for outreach activities with community organizations.
- Annual Performance Goal for years two through five - Increase outreach activities with community-based organizations that work with vulnerable population groups by 5%.

Establish baselines, develop targeting list, and increase inspections by 5% in high-hazard industries with vulnerable employees. Reduce serious workplace injuries and illnesses and the risks that lead to them.

- Ensure that at least 95% of the time, the correction of serious hazards is verified within 14 days of the abatement date.
- Continue outreach to small employers and hard-to-reach audiences by increasing publications, workshops, and conferences by 5%.
- Health enforcement will focus on targeting high-hazard industries by X%.
- Safety enforcement will target high-hazard industries by X%.
- Implement and conduct all state and local emphasis programs and appropriate National Emphasis Programs.
- Ensure that family members will be notified 100% timely.

Foster a culture of integrity, inclusion, teamwork, and excellence to strengthen confidence in the delivery of services.

- Increase cross-training in all programs.

Improve workplace safety and health for all workers through direct intervention methods that result in fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities.

- Reduce fatalities, injuries, and illnesses in specified construction sectors.
- Reduce fatalities, injuries, and illnesses in selected high-hazard industries.
- Focus enforcement activities on the food processing manufacturing industry.
- Reduce fatalities, injuries, and illnesses in agriculture.
- Focus on enforcement and educational outreach specific to heat illness prevention.
- Improve communication with and education of vulnerable employee populations.
- Form mutually beneficial partnerships.

- Ensure that all newly hired compliance safety and health officers (CSHOs) receive at least three initial CSHO training classes at the OSHA Training Institute or through in-house training in the first year.

## **Appendix E**

### **Suggested Procedures for Performing Random Sampling**

When conducting a special study or a general review of case files, it is not necessary to examine every case file. It is only necessary that the quantity of evidence used for addressing objectives and supporting findings and conclusions be sufficient. Sufficiency depends on the appropriateness of the evidence. In determining the sufficiency, one should determine whether enough appropriate evidence exists to address the objectives and support the findings and conclusions.

To this end, a sample of cases can be used to develop a reasonable estimate of the proportion of cases that exhibit certain characteristics. This approach uses fewer resources than reviewing every case file. The sampling design in this document is intended to meet the two objectives of 1) providing a reasonable estimate of the proportion of cases exhibiting certain characteristics, and 2) limiting the resources needed to conduct a case file review.

Prior to conducting a case file review, it is necessary to determine the following:

- What is the objective, or what question is to be answered? For instance, is the case file review driven by differences in or concerns arising from SAMM or SIR reports?
- What is the population of interest? What is the universe of cases (e.g., fatalities, complaints, etc.) to which the question will apply?

Once those questions have been considered, the next step is to set up the review. The steps follow:

1. Formulate the question;
2. Define the population of interest;
3. Determine sampling categories of interest;
4. Based on the size of the population of interest and the number of sampling categories, determine the sample size;
5. Select the sample so that there are cases in every category of interest; and
6. Analyze and interpret results.

Each of these steps is described below:

1. Formulate the question.

Every case file review will be designed to meet an objective or answer a question. For example, the question may be “are next-of-kin letters sent for fatalities?” or “are penalty reductions applied consistently for all non-serious violations?”

2. Define the population of interest.

The population of interest will be determined based on the question to be answered. For example, if the question to be answered is, “are next-of-kin letters sent for fatalities” then the population of interest will be all fatality case files. However, identification of the population of interest is not always so straight forward. For example, if the question to be answered is, “are

penalty reductions applied consistently for all non-serious violations,” it has to be decided whether the population of interest is all case files with non-serious violations or case files with only non-serious violations. Will programmed inspections be examined as well as complaints and/or fatalities? Enumerating the various populations of interest will help refine the question to be answered.

Keep in mind the following questions:

- What type of activity will be targeted, such as complaints, referrals, fatalities, or closed inspections with or without violations?
- What are the dates for selection? (example: evaluation period of October 1, 20XX through September 30, 20XX).

3. Determine the sampling categories of interest.

The sampling categories of interest will be determined, in part, by the population selected. If the selected population is all inspections, then all inspection types must be represented in the sample (e.g., complaint, referral, programmed, fatalities, etc.). In addition, there are other categories that may need to be represented in the sample. These may include office, safety vs. health inspection, CSHOs, as well as other categories. In general, the narrower the population of interest is, the fewer the number of categories will be.

4. Based on the size of the population of interest and the number of sampling categories, determine the sample size.

The size of one's sample is based on the number of case files in the population of interest. This can be determined using the table found in this appendix. The numbers presented are the recommended minimum number of cases to be reviewed for a range of population sizes. At the discretion of the reviewer, additional case files can be reviewed. It is essential, however, that the sample size be at least as large as the number of categories of interest.

5. Select case files to be reviewed.

Cases should be selected at random from among the population of case files in each of the categories of interest. The number of cases in each category should be proportional to the size of the category. Some methods for selecting samples are:

- o A random numbers table or
- o A pre-determined objective method (such as every 10th case file, even-numbered case files, etc.).

Document the process that was used to objectively select case files.

6. Analyze and interpret results.

## Sampling Table

The following table provides the base number for conducting case file reviews given the size of the overall population of cases.

Population Size	Sample Size
1 – 25	ALL
26 – 50	25
51 – 100	30
101 – 200	40
201 – 300	50
301 – 500	60
501 – 1000	80
1001+	100

**Appendix F**

**FY 20XX State OSHA Annual Report (SOAR)**

*[Insert State Plan Name]*

*[Insert State Plan Seal/Logo – Optional]*

**Evaluation Period: October 1, 20XX – September 30, 20XX**

**Prepared by:**

**Submitted *[Date]*:**

*(Note: Information in italics is provided as guidance in preparing the report and should be removed from the final document prior to submission.)*



## I. Executive Summary

*(Provide an overview of the report and the State Plan.)*

## II. Summary of Annual Performance Plan Results

*(Summarize the State Plan's results compared to the annual performance goals established in the Annual Performance Plan. This summary should include results in terms of the activity, intermediate outcome, and primary outcome performance measures [where available] that are part of the State Plan's performance measurement system. As data becomes available, the State Plan may update information about the results it achieves.)*

Strategic Goal #1					
Performance Goal #1.1					
Strategy					
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)					
FY 20XX Results					
Conclusion		Baseline	20## Target	20## Result	% Change
	(Topic)				
Performance Goal #1.2					
Strategy					
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)					
FY 20XX Results					
Conclusion					

### **III. Progress Toward Strategic Plan Accomplishments**

*(Provide a narrative summary describing the State Plan's progress toward accomplishing its five-year strategic goals. This section should highlight key areas where positive outcomes have been observed and present an analysis of the data used in measuring outcomes. It should also describe all strategies used to support goal accomplishment, such as enforcement, compliance assistance, and standards.)*

### **IV. Mandated Activities**

*(Include a summary of the State Plan's performance of its mandated activities.)*

### **V. Special Measures of Effectiveness/Special Accomplishments (Optional)**

*(Provide a summary of additional State Plan accomplishments that may directly or indirectly affect its strategic goals or operations. Relevant data should be included.)*

### **VI. Adjustments or Other Issues (Optional)**

*(Identify areas or other issues where the State Plan's annual performance goals have not been met, and describe how the State Plan has adjusted or plans to adjust its strategies to accomplish its goals in the future. These issues should also be addressed in the conclusion areas of the chart (located in Section II). [This section provides the State Plan an opportunity to expand on the discussion and describe proposed adjustments in more detail.]*

### **VII. State Internal Evaluation Program (SIEP) Report (Optional)**

*(Insert the SIEP Report.)*

**Appendix G**

**FY 20XX Comprehensive  
Federal Annual Monitoring and Evaluation (FAME) Report**

*[Insert Name of State Plan]*

*[Insert State Plan Seal/Logo – Optional]*

**Evaluation Period: October 1, 20XX – September 30, 20XX**

Initial Approval Date: [ ]  
State Plan Certification Date: *[If Applicable]*  
Final Approval Date: *[If Applicable]*

**Prepared by:**  
**U. S. Department of Labor**  
**Occupational Safety and Health Administration**  
**Region [ # ]**  
*[City, State]*



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*[Information in italics is provided as guidance in preparing the report and should be removed from the final document prior to submission.]*

## **I. Executive Summary**

*This section should provide an overview of the report and of the State Plan. It may be the only section read by some and therefore must concisely and accurately tell the story of the State Plan. The summary should highlight both State Plan successes and deficiencies.*

### **A. State Plan Activities, Trends, and Progress**

*This paragraph should begin with a statement of purpose, e.g., to assess the State Plan's activities for the previous year and its progress in resolving outstanding recommendations from the previous year's FAME. Other important elements of Section A include:*

- The narrative should tell the story of the condition of the State Plan at a big picture level, including how this assessment compares to previous assessments. (For example, is the State Plan generally responsive to previously identified findings and recommendations? Is program administration holding at a high level or improving, or are we seeing signs of problems?)*
- Key elements that the reader should take away from this FAME should be covered early in the summary.*
- Ensure that the summary includes why OSHA believes the State Plan is having the experience they are having, not just what the major problems and/or successes are.*
- Findings and highlights can and should be used to support the overall picture that you are painting of the State Plan, but there is no need to cover each finding or observation comprehensively.*
- Do not include a statement that the State Plan is or is not at least as effective as OSHA.*

### **B. State Plan Introduction**

*This paragraph contains a brief profile of the State Plan, including:*

- The department or division within the organizational structure of the State Plan's government in which it is operated;*
- The identity of the State Plan designee and manager;*
- The major distinctive features of the State Plan or significant differences from OSHA;*
- The number of full-time and part-time staff;*

- *The State Plan budget;*
- *The type of on-site consultation provided by the State Plan (if a private sector on-site consultation program is funded under 23(g), it must be assessed in this report); and*
- *Easy-to-digest charts for topics, such as staffing, covered workers, and year-over-year funding levels (charts similar to or exactly the same as ones included in the grant application can be effective tools for conveying parts of this information and should be included as appropriate).*

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

*The following explanation of the contrast between a comprehensive FAME and follow-up FAME should be included in this section:*

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.

*This section lists basic information about the on-site case file review performed and all data sources used, including the number of days on site, the scope of the review, the types of programs reviewed, the number and types of case files reviewed, and the number and type of interviews conducted (in general terms by category) with associated stakeholders and State Plan staff.*

### **D. Findings and Observations**

*This section provides a summary of the findings and observations herein. The summary should specifically distinguish between new and continued items. (For example, OSHA identified 10 findings of which seven are new and three are continued.) Additionally, any notable trends should be acknowledged, such as a concentration of findings in a specific area. State Plan successes in completing previous findings should also be noted. Include appropriate references to Appendices A-C. Please note that a list of all findings and observations is not required in this section.*

## **II. Major New Issues**

*This section discusses any significant new issues that occurred during the evaluation period. It should also acknowledge issues with the potential for significant impact on the State Plan that the public is aware of that have occurred subsequent to the evaluation period, including legislative and budget actions or administrative criticisms raised in the media. Include only issues that had or have the potential for a substantial impact on the State Plan's performance. If there are no major new issues, simply state "None."*

### III. Assessment of State Plan Performance

*This section must be organized by performance, formal findings, recommendations, and observations:*

- The State Plan's performance regarding each mandated activity or program element, identifying positive features and deficiencies and/or concerns (e.g., State Plan policies that are more stringent than OSHA's policies and enforcement performance areas that exceed those of OSHA, should be the focus). When deficiencies or concerns are found, the underlying causes should be identified, including whether the issue is caused by a current policy. For example, if the case file review reveals that hazards are being cited using the wrong standard, the underlying cause (e.g., inadequate initial training or lack of supervisory review) should be investigated and explained.*
- Any formal findings and recommendations should be related to each mandated activity or program element related to each activity or program element, and, as appropriate, supporting data gathered from the case file review, IMIS reports (including the State Activity Mandated Measures (SAMM) Report, State Information Report, and 23(g) consultation data), stakeholder and State Plan staff interviews, the State OSHA Annual Report (SOAR), Complaint About State Program Administration (CASPA), and any special study that was conducted. Whenever data is used throughout the report, the source must be cited. The findings must succinctly explain the apparent issues with the State Plan's performance and be supported by data/observations discovered during the evaluation.*

*When information from the case file review is used to support a finding in the report, include the number and percentage of case files in which the issue was identified. Findings should be made when there is a clear trend in the data that supports a need for improvement. Isolated incidents in only a limited number of cases would not usually indicate a pattern warranting a formal finding.*

*Each finding should have a corresponding recommendation. The recommendations should be outcome- and results-oriented rather than process-oriented and should provide a concrete performance result that would address the finding. It is not necessary or appropriate to specify how the State Plan should go about achieving the desired result. Both the finding and recommendation should be worded in such a way that they can "stand alone" when read.*

*All findings and recommendations should include the current evaluation year and be numbered sequentially (for example, 20XX-01 = FY 20XX and the first recommendation). Continued recommendations from previous years should be renumbered for the most recent FY with a parenthetical reference to the previous FY's numbering. If this same finding and recommendation originated in the previous year's FAME Report, the Region should briefly explain this fact in the appropriate section of the narrative. In addition to a more detailed discussion of each finding and recommendation in this section, a complete listing of all the findings and recommendations (with assigned numbers) should also be included in Appendix A.*



*Any new observations and all prior observations that are subject to continued monitoring should also be listed in this section. Each observation should be put into one of the four following categories: new, continued, converted to finding, or closed.*

*For observations that are new or continued, a FY number should be assigned and recorded in the first column in the following format, FY 20XX-OB-#. For continued observations, the previous FY 20XX number(s) should be recorded in the second column in the following format, FY 20XX-OB-#. A brief description of the issue and the Federal Monitoring Plan should be provided. Observations that are converted to a finding or closed will not have an FYXX number assigned and will not have a Federal Monitoring Plan listed.*

*In addition to a more detailed discussion of each observation in this section, a complete listing of all new and continued observations (with assigned numbers) should also be included in Appendix B. More detailed instruction regarding observations is also included in this template.*

- *For many of the below sub-sections, **two years' worth of information** should be included and analyzed since this was not captured on the previous FAME.*

*This section must address the following mandated activities and program elements:*

**A. STATE PLAN ADMINISTRATION**

- 1) Training
- 2) Funding
- 3) Staffing (including benchmarks, furloughs, hiring freezes, etc.)
- 4) IMIS – use of IMIS reports for State Plan management
- 5) State Internal Evaluation Program (SIEP) Report

**B. ENFORCEMENT**

- 1) Complaints
  - a) Timeliness of State Plan response and notifications to complainant
  - b) State Plan response
- 2) Fatalities
  - a) Contact and involvement of families of victims, including notification of enforcement action
  - b) Appropriate use of “no inspection” or “no jurisdiction”
  - c) Timeliness, notification, and opening conference
  - d) Bureau of Labor Statistics rates, where available, to assess trending and appropriate targeting of resources
  - e) Appropriateness of investigation findings
- 3) Targeting and Programmed Inspections
  - a) Goals, emphasis programs, participation in National Emphasis Programs (NEPs)
  - b) In-compliance inspections

- c) Hazard identification
  - d) Violations per inspection
  - e) Number and percentage of serious, willful, and repeat violations
  - f) Significant cases
- 4) Citations and Penalties
- a) Adequate evidence to support violations
  - b) Citations for all apparent violations
  - c) Number and percentage of serious, willful, and repeat violations
  - d) Appropriateness of violation classification
  - e) Grouping of violations, if appropriate
  - f) Appropriate use of willful and repeated violation classifications
  - g) Appropriate use and level of review for notice of violations, if applicable
  - h) Average serious penalty
  - i) Appropriateness of penalties
- 5) Abatement
- a) Appropriate abatement periods, including the use of extensions and overall timeliness
  - b) Adequate verification or evidence of abatement
  - c) Follow-up inspections when indicated
- 6) Worker and Union Involvement
- a) Adequate policies and procedures addressing worker involvement during inspection process
  - b) Worker interviews and adequacy of documentation of worker interviews
  - c) Union or other labor representative participation in opening and closing conferences, walk around, settlement, and contests

## **C. REVIEW PROCEDURES**

- 1) Informal Conferences
- a) Penalty reduction programs
  - b) Adequacy of procedures and whether followed
  - c) Violations vacated and/or reclassified
  - d) Penalties reduced or retained; initial vs. final penalties
  - e) Appropriateness and documentation of changes made and reasons for any changes
  - f) Reasons for modifications and whether changes are the result of problems
  - g) Patterns of settlements
- 2) Formal Review of Citations
- a) Adequacy of State Plan defense
  - b) Violations vacated and/or reclassified
  - c) Penalties reduced or retained; initial vs. final penalties

- d) Whether changes are due to problems with original citations
- e) Review of adverse decisions by State Plan
- f) Transparency of process; availability of decisions to public
- g) Quality of decisions; consistency with federal precedence
- h) Procedural issues (timely hearings; full-time review board members and staff)

#### **D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs) ADOPTION**

- 1) Standards Adoption
  - a) Standards adoption process
  - b) Standards with adoption due during evaluation period and any delinquent from earlier; timely notice of intent provided
  - c) Number and percentage of standards adopted on time (within six months of federal promulgation), submitted on time with comparison document if different
  - d) Status of standards not adopted on time
  - e) Different State Plan standards and State Plan-initiated standards
- 2) OSHA or State Plan-Initiated Changes
  - a) FPCs due during evaluation period and any delinquent from earlier; timely notice of intent
  - b) Number and percentage of FPCs adopted and submitted on time with comparison document if different
  - c) Status of FPCs not adopted on time
  - d) State Plan-initiated changes
  - e) Timely submission of legislative and regulatory changes
  - f) State Plan response and activity regarding NEPs and State Plan response to the penalty policy

#### **E. VARIANCES**

- 1) Number of permanent and temporary variances requested and granted
- 2) Adequacy of alternate protection afforded to workers (permanent variance)
- 3) Temporary variances only granted prior to effective date of standard/provision

#### **F. PUBLIC EMPLOYEE PROGRAM**

- 1) Percentage of total inspections in the public sector
- 2) If no monetary penalties are imposed, adequacy or effect of State Plan's alternative

#### **G. WORKPLACE RETALIATION PROGRAM**

*Select a representative sample of case files to determine whether:*

- 1) Determination reached in each case is based on substantive evidence in the case file and sound legal reasoning;
- 2) Policies and procedures that are at least as effective as OSHA's are followed in each investigation; and

- 3) Merit settlement and litigation rates are appropriate, as well as whether investigations are timely.

#### **H. CASPAs**

*Specific CASPA findings should be addressed under the appropriate program element.*

- 1) Number of CASPAs received by the Region
- 2) Timeliness and appropriateness of written response from State Plan
- 3) Any concerns regarding State Plan's follow-up actions in response to findings

#### **I. VOLUNTARY COMPLIANCE PROGRAM**

- 1) Adequacy of written policies and procedures for voluntary and cooperative programs
- 2) Appropriateness of State Plan to provide exemptions and other enforcement incentives
- 3) Any changes that were made to the State Plan's voluntary and cooperative programs

#### **J. PUBLIC SECTOR 23(d) ON-SITE CONSULTATION PROGRAM**

*This section should include a summary and discussion of the State Plan's public sector 23(g) on-site consultation program. Evaluation of the 21(d) on-site consultation program should not be consolidated with any previous FAME Report. Regions should perform a separate evaluation of the 21(d) on-site consultation program, and the Regional Annual Consultation Evaluation Report (RACER) should be issued separately from the previous year's FAME Report. State Plans must issue their SOAR separately from their Consultation Annual Project Report (CAPR). This section should include:*

- 1) Number of visits;
- 2) Percentage of visits with hazards abated within the required timeframe;
- 3) Any other data of interest from 23(g) consultation data;
- 4) Assessment of annual performance in relation to grant projections; and
- 5) Issues or areas of concern during the report period.

#### **K. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAM (KENTUCKY, PUERTO RICO, AND WASHINGTON ONLY)**

*Regions monitoring the Kentucky, Puerto Rico, and Washington State Plans should follow the guidance in Chapter 9 of the [Consultation Policies and Procedures Manual \(CSP 02-00-002\)](#) (CPPM) when evaluating their private sector 23(g) on-site consultation program. The Regions' review should be similar to the evaluation it conducts of the 21(d) on-site consultation program in order to prepare the RACERs. Private sector on-site consultation programs funded under 23(g) are expected to be equivalent to 21(d) on-site consultation programs and meet all of the same requirements. This section should include:*

- 1) Assessment of performance of mandated consultation activities;

- 2) Evaluation of State Plan performance using the guidance in Chapter 9 of the CPPM; and
- 3) Assessment of annual performance in relation to grant projections.

**L. REGIONAL SPECIAL STUDY (IF CONDUCTED)**

*This section should only be completed with information collected during a Regional special study. If the National Office conducts a special study, please follow the instructions issued separately.*

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

*This section provides a general assessment of whether the State Plan has made sufficient progress toward achieving its annual performance goals (one to three years) and is thus on track to accomplish its five-year strategic goals. In addition, any goals not discussed elsewhere in the report should be included in this section. The Region will review the SOAR and other appropriate data and assess the State Plan's performance results, including activity, intermediate outcome, and outcome measures. The Region's assessment must identify the State Plan's annual performance goals that are not on target for successful completion and identify recommendations for improvement. The Region's assessment must also include a review of the actions the State Plan took in response to previous OSHA recommendations on the implementation and achievement of the State Plan's strategic and performance goals or measurement system.*

*Information on the State Plan's short-term (1-3 years) and long-term (3-5 years or more) goals regarding injury and illness data should be included. The data should include composite, sector, and industry data for the State Plan and be compared to national injury and illness data. Whenever a State Plan's specific rate exceeds the national average, the Region's assessment should determine if the rate(s) need to be addressed by the State Plan. The assessment should identify what actions the State Plan has undertaken, or plans to initiate, in order to address an issue (e.g., higher rates), if appropriate. The assessment should include a determination on whether the State Plan did or should conduct one or more of the following activities regarding the higher injury or illness rate:*

- Revise the annual performance goals;
- Develop State Plan industry-specific standards;
- Conduct targeted outreach;
- Adopt an NEP;
- Develop a local emphasis program;
- Consider the conditions of employment in a specific NAICS or industry; or
- Take other actions.

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

*This section provides information on other special measures of effectiveness that the State Plan utilized, any additional monitoring that was performed, or other areas of note that warrant discussion.*

## Appendix A – New and Continued Findings and Recommendations

FY 20XX [State Plan Name] Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#

*The table above should reflect all new findings and recommendations, continued findings/recommendations, and any observations that have been converted to findings from the previous year's FAME. For recommendations where the State Plan has implemented agreed upon corrective actions, but those actions have not yet been verified as effective by OSHA, it shall be noted by adding the phrase "corrective action complete, awaiting verification" to the end of the recommendation.*

**FY 20XX-#** [COLUMN 1] lists the FAME Report fiscal year (FY 20XX) and related findings and recommendations #(01) - (Example: 2014-01).

**Finding** [COLUMN 2] lists OSHA's findings from the most recent FAME.

**Recommendation** [COLUMN 3] lists OSHA's recommendations to address and resolve the related findings from the most recent FAME.

**FY 20XX-# or FY 20XX-OB#** [COLUMN 4] lists the fiscal year and number of the continued findings and recommendations or the fiscal year and number of an observation that was converted to a finding from the most recent FAME.

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

FY 20XX [State Name] State Plan FAME Report

Observation # FY 20XX-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2014-OB-01	FY 2013-OB-01	In seven of the 29 complaint files (24%) reviewed, documentation that the complainant was notified of the results of the inspections, either by letter or phone, was missing in the case file.	During next year's FAME, a limited scope review of selected case files will be reviewed to determine if this reflects the data trend.	Continued
FY 2014-OB-03	FY 2013-05	Inspection results and a copy of the citation was not sent to the union in two of the seven case files (28.5%) reviewed that had both an authorized union and where citations were issued.	In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if this item was addressed.	New

*This appendix includes any new observations and all observations from the previous year's FAME, regardless of current status.*

### **Observation # [COLUMN 1 AND COLUMN 2]**

*For observations that are new or continued, a FY number should be assigned and recorded in the first column in the following format, FY 20XX-OB-#. For continued observations, the previous observation number should be recorded in the second column in the following format, FY 20XX-OB-#. For an observation converted from a finding, the previous finding (FY 20XX-#) should be entered in the second column.*

### **Observation [COLUMN 3]**

*Provide a brief description of the issue (e.g., discrepancy that appears to be an isolated occurrence, data supporting the issue is limited).*

### **Federal Monitoring Plan [COLUMN 4]**

*This is a brief description of how OSHA plans to monitor the issue (observation) over the next evaluation period. OSHA must take action to either close the observation or convert it to a formal finding within three years from the date of issuance. Observations that are converted to a finding or closed will not have an FY 20XX number assigned and will not have a Federal Monitoring Plan listed.*

### **Current Status [COLUMN 5]**

*Each observation should be put into one of the four following categories:*

- 1) **New** – New observation (this could be a converted finding).
- 2) **Continued** – Observation is being carried over from one or more previous FAMEs.
- 3) **Converted to Finding** – Observation has been elevated to a finding in the current year.
- 4) **Closed** – OSHA will cease monitoring as an observation.



## Appendix C - Status of FY 20XX Findings and Recommendations

FY 20XX [State Plan Name] Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date

*The table above should reflect the most up-to-date information derived from the State Plan's most recent Corrective Action Plan and include the following:*

**FY 20XX-#** [COLUMN 1] lists the fiscal year (FY) and FAME Report year (20XX) and number of the related findings and recommendations (Example: FY 20XX-01).

**Finding** [COLUMN 2] lists OSHA's findings from the most recent FAME.

**Recommendation** [COLUMN 3] lists OSHA's recommendations to address and resolve the related findings from the most recent FAME.

**State Plan Response/Corrective Action** [COLUMN 4] lists the State Plan's response and/or corrective action to OSHA's related FAME findings and recommendations.

**Completion Date** [COLUMN 5] lists the completion date of the corrective action for each finding and recommendation.

**Current Status and Date** [COLUMN 6] lists the current status and date of each FY 20XX FAME corrective action, which include the following categories:

- 1) *Open* – a corrective action has not yet been taken by the State Plan and will be carried over in the next FAME.
- 2) *Awaiting verification* – a corrective action has been taken by the State Plan but not yet verified by the Region.
- 3) *Converted to observation* – a previous finding that has been converted to an observation for monitoring in the next FAME.
- 4) *Completed* – a corrective action has been taken by the State Plan and verified by the Region.
- 5) *Closed* – the Region and State Plan mutually agree the correction action has not been proven to impact the effectiveness of the State Plan and the Region has closed this finding.

## **Appendix D - Status of FY 20XX Findings and Recommendations**

FY 20XX [State Plan Name] Comprehensive FAME Report

*[Close-out FY 20XX SAMM from O:/drive]*

## Appendix H

### **FY 20XX Follow-up Federal Annual Monitoring and Evaluation (FAME) Report**

*[Insert State Plan Name]*

*[Insert State Plan Seal/Logo – Optional]*

**Evaluation Period: October 1, 20XX – September 30, 20XX**

**Initial Approval Date: [ ]**  
**Program Certification Date: *[If Applicable]***  
**Final Approval Date: *[If Applicable]***

**Prepared by:**  
**U. S. Department of Labor**  
**Occupational Safety and Health Administration**  
**Region [ ]**  
***[City, State]***



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*(Note: Information in italics is provided as guidance in preparing the report and should be removed from the final document prior to submission.)*

## **I. Executive Summary**

*This section should provide an overview of the report and of the State Plan. It may be the only section read by some and therefore must concisely and accurately tell the story of the State Plan. The summary should highlight both State Plan successes and deficiencies.*

### **A. State Plan Activities, Trends, and Progress**

*This paragraph should begin with a statement of purpose, e.g., to assess the State Plan's activities for the previous year and its progress in resolving outstanding recommendations from the previous year's FAME. Other important elements of Section A include:*

- The narrative should tell the story of the condition of the State Plan at a big picture level, including how this assessment compares to previous assessments. (For example, is the State Plan generally responsive to previously identified findings and recommendations? Is program administration holding at a high level or improving, or are we seeing signs of problems?)*
- Key elements that the reader should take away from this FAME should be covered early in the summary.*
- Ensure that the summary includes why OSHA believes the State Plan is having the experience they are having, not just what the major problems and/or successes are.*
- Findings and highlights can and should be used to support the overall picture that you are painting of the State Plan, but there is no need to cover each finding or observation comprehensively.*
- Do not include a statement that the State Plan is or is not at least as effective as OSHA.*

### **B. State Plan Introduction**

*This paragraph contains a brief profile of the State Plan, including:*

- The department or division within the organizational structure of the State Plan's government in which it is operated;*
- The identity of the State Plan designee and manager;*
- The major distinctive features of the State Plan or significant differences from OSHA;*

- *The number of full-time and part-time staff;*
- *The State Plan budget;*
- *The type of on-site consultation provided by the State Plan (if a private sector on-site consultation program is funded under 23(g), it must be assessed in this report);*
- *Easy-to-digest charts for topics, such as staffing, covered workers, and year-over-year funding levels (charts similar to or exactly the same as the ones included in the grant application) can be an effective tool for conveying parts of this information and should be included, as appropriate.*

## **C. Data and Methodology**

*This section should discuss the federal monitoring activities performed and data sources used to conduct this FAME. In most cases, the following explanation of the contrast between the comprehensive FAME and follow-up FAME should be included in this section:*

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform the level of case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME.

*Conducting an on-site evaluation and case file review for this FAME is optional; however, if follow-up corrective active items or information received during the evaluation period warrants a more comprehensive approach, conducting a case file review may be necessary. If an on-site evaluation and case file review was conducted during this FAME year, this section should follow the format and guidance as described in the comprehensive FAME template. Additionally, if a special study is conducted as part of the FAME process, the methodology should be captured in this section.*

## **D. Findings and Observations**

*This section provides a summary of the findings and observations herein. The summary shall specifically distinguish between new and continued items. (For example, OSHA identified ten findings, of which seven are new and three are continued.) Additionally, any notable trends should be acknowledged, such as a concentration of findings in a specific area. State Plan successes in completing previous findings shall also be noted. Include appropriate references to Appendices A-C. Please note that a list of all findings and observations is not required in this section.*

## **II. Assessment of State Plan Performance**

*This is an abbreviated review of State Plan performance primarily covering items that require review on an annual basis, such as annual performance goals and SAMM data, or major issues that were the result of media attention, legislative action, or a Complaint About State Program*

*Administration (CASPA). All new findings and observations should be discussed in this section, as well as listed in the Appendix A or B, as appropriate.*

## **A. Major New Issues**

*This section discusses any significant new issues that occurred during the evaluation period. It should also acknowledge issues with the potential for significant impact on the State Plan that the public is aware of that have occurred subsequent to the evaluation period, including legislative and budget actions or administrative criticisms raised in the media. Include only issues that had or have the potential for a substantial impact on the State Plan's performance. This section shall reference Appendix A or B if new findings or observations are created as a result of the new issues. If there are no major new issues, simply state "None."*

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

*This section provides a general assessment of whether the State Plan has made sufficient progress toward achieving its annual performance goals. The Region will review the State OSHA Annual Report and other appropriate data and assess the State Plan's performance results, including activity and outcome measures. The Region's assessment must identify the State Plan's annual performance goals that are not on target for successful completion and identify recommendations for improvement.*

## **C. Highlights from the State Activity Mandated Measures (SAMM)**

*This section should discuss any SAMM results of significance. For example, a SAMM that now falls outside further review levels would constitute a significant change. Additionally, a notable change in year-over-year trending within the further review level may also warrant mention. In many cases, changes in SAMM data may be more appropriately noted as observations until deficiencies are confirmed through case file review. Positive trends within SAMM data may also be mentioned in this section unless the positive change is associated with a finding or observation that will be discussed in Section III of this report.*

*This section shall reference Appendix D for complete SAMM results. Results that align with historic averages need not be specifically discussed in this section. Additionally, measures associated with active findings or observations that will be discussed in Section III of this report do not additionally need to be covered here.*

## **D. Summary of Special Study (Optional)**

*If the Region elected to conduct a special study, a summary of the special study should be included here. The summary should include the purpose of the special study, qualitative or quantitative information collected as a result of the study, analysis of the information, and any findings or observations that have resulted from the study. Methodology for the special study is*



*more appropriately captured in Section I.C of this report. If no special study is conducted, this section of the report should be removed.*

### **III. Assessment of State Plan Corrective Actions**

*This section should include a detailed discussion of the status of findings from the previous year's FAME as discussed in Appendix C and the observations as discussed in Appendix B (excluding new observations, which should be discussed in Section II above). Items with completed corrective actions shall be noted. Special emphasis should be placed on items where the State Plan has not yet implemented corrective actions to satisfy the identified deficiencies. The discussion should include an agreed course of action for resolution of the finding. If case file review is conducted as a means to verify a corrective action, that information should be included in the write-up associated with the finding.*

## Appendix A – New and Continued Findings and Recommendations

FY 20XX [State Plan Name] Follow-up FAME Report

FY 20XX-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#

*The table above should reflect all new findings and recommendations, continued findings and recommendations, and any observations that have been converted to findings from the previous year's FAME. For recommendations where the State Plan has implemented agreed upon corrective actions, but those actions have not yet been verified as effective by OSHA, it shall be noted by adding the phrase "corrective action complete, awaiting verification" to the end of the recommendation.*

**FY 20XX-#** [COLUMN 1] lists the FAME Report fiscal year (FY 20XX) and related findings and recommendations #(01) - (Example: 2014-01).

**Finding** [COLUMN 2] lists OSHA's findings from the most recent FAME.

**Recommendation** [COLUMN 3] lists OSHA's recommendations to address and resolve the related findings from the most recent FAME.

**FY 20XX-# or FY 20XX-OB#** [COLUMN 4] lists the fiscal year and number of the continued findings and recommendations or the fiscal year and number of observations that were converted to findings from the most recent FAME.

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

FY 20XX [State Plan Name] Follow-up FAME Report

Observation # FY 20XX-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2014-OB-01	FY 2013-OB-01	In seven of the 29 complaint files (24%) reviewed, documentation that the complainant was notified of the results of the inspections, either by letter or phone, was missing in the case file.	During next year's FAME, a limited scope review of selected case files will be reviewed to determine if this reflects the data trend.	Continued
FY 2014-OB-03	FY 2013-05	Inspection results and a copy of the citation was not sent to the union in two of the seven case files (28.5%) reviewed that had an authorized union and where citations were issued.	In FY 2014, a limited number of case files will be selected randomly and reviewed to determine if this item was addressed.	New

This appendix includes any new observations and all observations from the previous year's FAME, regardless of current status.

### **Observation #** [COLUMN 1 AND COLUMN 2]

For observations that are new or continued, a fiscal year (FY) number should be assigned and recorded in the first column in the following format, FY 20XX-OB-#. For continued observations, the previous observation number should be recorded in the second column in the following format, FY 20XX-OB-#. For an observation converted from a finding, the previous finding (FY 20XX-#) should be entered in the second column.

### **Observation** [COLUMN 3]

This is a brief description of the issue (e.g., discrepancy that appears to be an isolated occurrence, data supporting the issue is limited).

### **Federal Monitoring Plan** [COLUMN 4]

This is a brief description of how OSHA plans to monitor the issue (observation) over the next evaluation period. OSHA must take action to either close the observation or convert it to a formal finding within three years from the date of issuance. Observations that are converted to a finding or closed will not have an FY 20XX number assigned and will not have a Federal Monitoring Plan listed.

### **Current Status** [COLUMN 5]

Each observation should be put into one of the four following categories:

- 1) **New** – New observation (this could be a converted finding).
- 2) **Continued** – Observation is being carried over from one or more previous FAMEs.
- 3) **Converted to Finding** – Observation has been elevated to a finding in the current year.
- 4) **Closed** – OSHA will cease monitoring as an observation.

## Appendix C - Status of FY 20XX Findings and Recommendations

FY 20XX [State Plan Name] Follow-up FAME Report

FY 20XX-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date

*The table above should reflect the most up-to-date information derived from the State Plan's most recent Corrective Action Plan and include the following:*

**FY 20XX-#** [COLUMN 1] lists the fiscal year (FY) and FAME Report year (20XX) and number of the related findings and recommendations (Example: FY 20XX-01).

**Finding** [COLUMN 2] lists OSHA's findings from the most recent FAME.

**Recommendation** [COLUMN 3] lists OSHA's recommendations to address and resolve the related findings from the most recent FAME.

**State Plan Response/Corrective Action** [COLUMN 4] lists the State Plan's response and/or corrective action to OSHA's related FAME findings and recommendations.

**Completion Date** [COLUMN 5] lists the completion date of the corrective action for each finding and recommendation.

**Current Status and Date** [COLUMN 6] lists the current status and date of each FY 20XX FAME corrective action, which include the following categories:

- 1) Open – a corrective action has not yet been taken by the State Plan and will be carried over in the next FAME.
- 2) Awaiting verification – a corrective action has been taken by the State Plan but not yet verified by the Region.
- 3) Converted to observation – a previous finding that has been converted to an observation for monitoring in the next FAME.
- 4) Completed – a corrective action has been taken by the State Plan and verified by the Region.
- 5) Closed – the Region and State Plan mutually agree the correction action has not been proven to impact the effectiveness of the State Plan and the Region has closed this finding.

## **Appendix D – FY 20XX State Activity Mandated Measures (SAMM) Report**

FY 20XX [State Plan Name] Follow-up FAME Report

*[Close-out FY 20XX SAMM from O:/drive]*

Appendix I

State Plan Corrective Action Plan (CAP) Template

FY 20XX-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date

*The State Plan Corrective Action Plan (CAP) is completed jointly by the Region and the State Plan. The CAP should provide clear, detailed responses for each finding and recommendation. The Region, in collaboration with DCSP, will review the CAP and provide feedback as appropriate.*

***FY 20XX-#*** [COLUMN 1] lists the fiscal year of the most recent FAME and the related finding and /recommendation # (e.g., FY 2014-01). (Region completes this column.)

***Finding*** [COLUMN 2] lists the Region's findings from the most recent FAME. (Region completes this column.)

***Recommendation*** [COLUMN 3] lists the Region's recommendations to address and resolve the related findings from the most recent FAME. (Region completes this column.)

***State Plan Response/Corrective Action*** [COLUMN 4] lists the State Plan's response and plan to address CAP items. (State Plan completes this column.)

***Completion Date*** [COLUMN 5] lists the date that the CAP items were completed. (State Plan completes this column.)

***Current Status and Date (to be tracked/updated by the Region)*** [COLUMN 6] lists the appropriate status category for each finding and recommendation (e.g., open, awaiting verification, completed, etc.) and most recent date reviewed by the Region. (Region completes this column.)

Appendix J  
Sample Acknowledgement Letters to CASPA Complainants

CASPA – No Investigation Will Be Conducted

[CASPA Complainant]  
[Address]

RE: CASPA #

Dear [Complainant]:

This is in response to your [date] letter to the Occupational Safety and Health Administration (OSHA) regarding a Complaint About State Program Administration (CASPA) concerning the state of [state name]. In your letter, you allege that *[restate allegations]*.

We have carefully considered your request. However, a determination has been made that a CASPA investigation is not warranted in this case for the following reason(s): *[Note: Please select from the listed options the reason for the denial of a CASPA investigation. Be sure to remove the remaining possible reasons that are not applicable to the case. It is important to follow this with a **detailed explanation of how this decision was reached**. More information on each of these can be found in section E.3 of the Policies and Procedures Manual]:*

- (a) A complainant has not exhausted the available administrative remedies provided for by state procedures and regulations. *[Explain]*
- (b) The complaint pertains to a matter that is not within the jurisdiction of the state program. *[Explain]*
- (c) The Federal State Plan Monitor has already investigated a sufficient number of complaints of the same nature which makes an additional investigation unnecessary. *[Explain]*
- (d) The CASPA allegations are vague, specific instances of inadequate state activity that are not documented, or the content of the complaint does not sufficiently explain the activity that is alleged to be inadequate. *[Explain]*
- (e) The CASPA allegations include recommendations and suggestions relating to state operations that have no impact on the state's "at least as effective" status. *[Explain]*
- (f) The CASPA recommends revisions to standards that include requirements more stringent than those enforced by OSHA or reflect requirements not included in federal OSHA standards. *[Explain]*
- (g) The complainant changed his or her mind after filing the CASPA and signed a negotiated settlement agreement. *[Explain]*
- (h) The events pertaining to the complaint occurred so long ago that an investigation in the context of current conditions would not be possible. *[Explain]*
- (i) *If this is an 11(c) workplace retaliation complaint, this is not the most appropriate letter to use as a template. Please see template # \_\_ for an appropriate template for this situation.*



**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

If you do not agree with this decision and you have additional information that could result in a different decision, you may request reconsideration by contacting the Regional Office at:

[Name of Regional Administrator, Regional Office address, phone, e-mail]

Please contact me if you have any additional questions or concerns regarding this matter. I may be reached at [phone number].

Sincerely,

[Area Director's Name]

Area Director

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

**Sample CASPA/Whistleblower Acceptance Letter**

[date]

[Complainant/Complainant's Attorney]

Street Address

City, State ZIP

Re: CASPA #; ABC Company/Complainant/Case No. 1-2345-02-001

Dear [Complainant/Complainant's Attorney]:

This is in response to your Complaint About State Program Administration (CASPA) about the [state agency's] handling of your retaliation complaint against [respondent] under [state agency statute]. In brief, you filed a complaint of retaliation with the [state agency] which alleged that you were [adverse action] on [date of adverse action] for [protected activity]. On [date of state determination], your retaliation complaint was dismissed by [state agency]. In filing your CASPA complaint, you indicate that you are dissatisfied with the state's handling of and the outcome of your complaint.

A CASPA investigation will be conducted to evaluate whether the state's investigation was adequate and its findings supported by the evidence. A review under CASPA procedures is not an appeal. However, if we find that the outcome of the state's investigation of your workplace retaliation complaint is not appropriate, we may require the state to reopen the case or in some manner correct the outcome, in addition to requiring the state to make procedural changes to prevent recurrence.

Our first step in the CASPA investigation will be to contact the state to request its response to your issues of concern. We will be contacting you to obtain specific authorization to release your name to the [state agency], so that your state investigative file can be obtained on your behalf. A CASPA investigation cannot begin without your authorization to release your name to the [state agency]. This is due to the necessity of our office acquiring any files related to your case. We may also be contacting you to obtain additional information. Upon completion of the investigation, OSHA will inform you of the findings, conclusions, and any recommendations made to the state. We will attempt to mail you a written response within 90 days of receiving your complaint.

We appreciate your interest in the effective implementation of the [state] occupational safety and health program.

Sincerely,

[Name]

Regional Administrator

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

Initial Letter to the State

[Name of State Plan Official]

[Address]

RE: CASPA #

Dear [Name of State Plan Official]:

Please be advised that we have received a Complaint About State Program Administration (CASPA) regarding the state's handling of a workplace safety and health inspection conducted at [name of former employer]. [The inspection # or complaint # is]. The specific allegations raised by the complainant are provided below:

(1)

(2)

(3)

(4)

In order for us to investigate these allegations, please provide us your response to the allegations within 30 days. We will also need to review the case file and any other appropriate documents that may assist us in understanding this case, so that we can reply to the CASPA complainant.

Thank you for your cooperation regarding this matter.

Sincerely,

[Area Director's Name]

Area Director

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

Letter to State Sensitive CASPA

[Name of State Plan Official]

[Address]

RE: CASPA #

Dear [Name of State Plan Official]:

We have received a Complaint About State Program Administration (CASPA) which alleges that *[explain the allegations]*.

Due to the nature of this CASPA, we are not asking you to provide an initial response as we usually do. Instead, OSHA will conduct an investigation, including interviews of [state program name] personnel and reviews of case files and statistical data. *[If relevant, add any other investigative methods that will be used.]*

It is our intention to initiate the investigation as soon as possible. To that end, we would like to discuss the allegations in a teleconference and propose that a call be held on [date and time].

Our point of contact for this investigation is [Federal Monitor name and phone number]. Please contact [him/her] to confirm this meeting time or to schedule another mutually convenient time.

If you have any questions, please let me know.

Sincerely,

[Regional Administrator's Name]

Regional Administrator

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

CASPA Letter to Complainant with Findings

[Complainant's Name]

[Address]

RE: CASPA #

Dear [Complainant]:

**[FATALITY CASPA ONLY]** Please accept my heartfelt condolences on the tragic death of your {husband, son, etc.}, Mr./Ms. XX. We deeply regret the loss of his/her life.

This is in response to your Complaint About State Program Administration (CASPA) regarding the handling of your complaint by [State Plan] against [employer] located in [city and state]. The allegations raise the following issues [summary of allegations]. [Include qualitative discussion of which allegations raise the most severe issues and cause significant concern for OSHA.]

In response to your complaint, we conducted interviews with you, representatives from [state], and reviewed a number of case files. We found merit in [x] of the [number of allegations] and make recommendations as discussed below.

**CASPA Allegation 1:**

**OSHA's Findings:**

**OSHA's Analysis:**

**OSHA's Recommendation** [if warranted]:

**CASPA Allegation 2:**

**OSHA's Findings:**

**OSHA's Analysis:**

**OSHA's Recommendation** [if warranted]

**CASPA Allegation 3:**

**OSHA's Findings:**

**OSHA's Analysis:**

**OSHA's Recommendation** [if warranted]

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

[State Plan] has been notified of the results of our investigation of your complaint, and is required to provide a written response to any recommendations. If you have any questions about this matter, please do not hesitate to contact me. If you disagree with our findings, you have the right to request a review by writing to the OSHA Regional Administrator at the following address:

[Regional Administrator]  
[Regional Office Address]

[FATALITY ONLY] Again, please accept my sincere sympathy and regret for your loss. If OSHA can be of any assistance to you, your family, or friends, please do not hesitate to contact us.

Sincerely,

[Regional Administrator or Area Director's Name]  
Regional Administrator or Area Director

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

**CASPA Letter to State with Findings**

[State Plan Official]

[Address]

RE: CASPA #

Dear [State Plan Official]:

This is in response to the referenced Complaint About State Program Administration (CASPA) regarding [state agency name]'s handling of a complaint filed against [employer] located in [city and state].

We previously sent the CASPA allegations in a letter to your office on [date]. Based on the interviews conducted with representatives from your staff and a review of a number of case files, we reached the following conclusions related to the allegations made by the complainant:

**CASPA Allegation 1:**

**OSHA's Findings:**

**OSHA's Analysis:**

**OSHA's Recommendation** [if warranted]:

**CASPA Allegation 1:**

**OSHA's Findings:** The state investigated the complaint regarding xx. Interview statements do not reflect xx.

**OSHA's Analysis:**

**OSHA's Recommendation** [if warranted]: *[Include suggested timeline for implementation, if applicable.]*

**CASPA Allegation 2:**

**OSHA's Findings:**

**OSHA's Analysis:**

**OSHA's Recommendation** [if warranted]: *[Include suggested timeline for implementation, if applicable.]*

**CASPA Allegation 3:**



**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

**OSHA's Findings:**

**OSHA's Analysis:**

**OSHA's Recommendation** [if warranted]: *[Include suggested timeline for implementation, if applicable.]*

As a result of OSHA's investigation of this CASPA, we are requesting your written response to the above recommendation(s) within 30 days. Any new or revised procedures should be submitted to OSHA as a State Plan change.

Your cooperation with our investigation is greatly appreciated. A copy of our response to the CASPA complainant, with the name removed, is enclosed. If you have any questions, please let me know.

Sincerely,

[Regional Administrator or Area Director's Name]  
Regional Administrator or Area Director

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

Response Letter to State – No Corrective Action Required

State Plan  
Address

RE: CASPA #

Dear:

We have completed our investigation of the above referenced Complaint About State Program Administration (CASPA). The complainant expressed concern about (*list allegations*).

Our investigation of this CASPA revealed {State Plan} that the state followed their policies and procedures. (*If appropriate, add the following: “which are at least as effective as federal OSHA’s as related to this case.”*)

We have notified the complainant of the results of our investigation. Enclosed is a copy of the response letter that was sent to the complainant. If you have any questions regarding this matter, you may contact (Federal Monitor) at (phone number).

Sincerely,

Name  
Regional Administrator

Enclosure

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

Sample CASPA/Whistleblower Acceptance Letter (11(c) Not Dually-Filed)

[date]

[Complainant/Complainant's Attorney]

Street Address

City, State ZIP

Re: CASPA #; ABC Company/Complainant/Case No. 1-2345-02-001

Dear [Complainant/Complainant's Attorney]:

This is in response to your Complaint About State Program Administration (CASPA) about the [state agency's] handling of your workplace retaliation complaint against [company name]. In brief, you filed a complaint of workplace retaliation with the [state agency] which alleged that you were [adverse action] on [date of adverse action] for [protected activity]. On [date of state determination], your workplace retaliation complaint was dismissed by [state agency]. In filing your CASPA complaint, you indicate that you are dissatisfied with the state's handling and the outcome of your complaint.

A CASPA investigation will be conducted to evaluate whether the state's investigation was adequate and its findings supported by the evidence. A review under CASPA procedures is not an appeal. However, if we find that the outcome of the State Plan's investigation of your workplace retaliation complaint is not appropriate, we may require the state to reopen the case or in some manner correct the outcome in addition to requiring the state to make procedural changes to prevent recurrence.

Our first step in the CASPA investigation will be to contact the state to request its response to your issues of concern. So that your state investigative file can be obtained on your behalf we will need to obtain specific authorization to release your name to the [state agency]. A CASPA investigation cannot begin without your authorization to release your name to the [state agency]. This is due to the necessity of our office acquiring any files related to your case. We have enclosed a copy of this authorization form with this letter. We may also be contacting you to obtain additional information. Upon completion of the investigation, OSHA will inform you of the findings, conclusions, and any recommendations made to the state. We will attempt to mail you a written response within 90 days of receiving your complaint.

We appreciate your interest in the effective implementation of the [state] occupational safety and health program.

Sincerely,

[Name]

Regional Administrator

Enclosure

Appendix J

**Sample Acknowledgement Letters to CASPA Complainants**

Sample CASPA Whistleblower/Workplace Retaliation Determination Letter to Complainant  
(No Recommendation)

[CASPA Complainant]  
[Address]

RE: CASPA #; ABC Company/Complainant/Case No. 1-2345-02-001

Dear [Complainant]:

Your Complaint About State Program Administration (CASPA) concerning the state's handling of your complaint of workplace retaliation against [respondent] under [state agency statute] has been investigated and carefully considered. In summary, you filed a complaint with the [state agency] which alleged that you were [adverse action] on [date of adverse action] for [protected activity]. The complaint was investigated by the [state agency] and dismissed on [date of state determination].

As a result of this federal review of the [state agency's] investigation of your complaint against [respondent], we found that the evidence developed during the state's investigation indicates that [respondent] did not violate [state whistleblower law] when it [adverse action]. Rather, the evidence indicates that [adverse action] was motivated by factors other than protected occupational safety and health activities. The state's investigation is deemed adequate and meets all federal requirements.

***[Summarize investigative steps taken, the analysis conducted, the conclusions reached. Also, consider any corrective action taken or planned by the state if violations are found.]***

Further proceedings in this matter are deemed unwarranted and your CASPA is now closed. If you have any questions concerning this matter, feel free to contact either myself or [Regional contact name] at [telephone number].

Sincerely,

[Name]  
Regional Administrator

**Appendix J**

**Sample Acknowledgement Letters to CASPA Complainants**

Sample CASPA Whistleblower/Workplace Retaliation Determination - State Plan Notification  
(No Recommendations)

[State Plan Designee]

[State Agency]

[Address]

RE: CASPA #; ABC Company/Complainant/Case No. 1-2345-02-001

Dear [State Plan Designee]:

On [date received], our office received a Complaint About State Program Administration (CASPA) regarding the above referenced workplace retaliation investigation. In summary, [complainant] alleged he/she was [adverse action] on [date of action] for complaining about [protected activity]. The complaint was investigated by the [state agency] under [state agency statute] and dismissed on [date of state determination].

As a result of this federal review of the [state agency's] investigation of the complaint against [respondent], we found that the evidence developed during the state's investigation indicates that [respondent] did not violate [state whistleblower law] when it [adverse action]. Rather, the evidence indicates that [adverse action] was motivated by factors other than protected occupational safety and health related activities. The state's investigation is deemed adequate and meets all federal requirements. A copy of our response to the CASPA complainant is enclosed.

If you have any questions concerning this matter, feel free to contact either myself or Regional Supervisory Investigator [name] at [telephone number].

Sincerely,

[Name]

Regional Administrator

Enclosure

Appendix J

Sample Acknowledgement Letters to CASPA Complainants

Name Release Form

Complaint About State Plan Administration (CASPA)

Your name will be withheld and is considered confidential, unless you give specific authorization for its release.

I, (complainant's name) do authorize that my name be disclosed by the Occupational Safety and Health Administration in the conduct of its investigation relative to my CASPA.

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

---

I, (complaint's name) do not waive my rights of confidentiality in that my name is ***not to be disclosed*** by the Occupational Safety and Health Administration in the conduct of its investigation relative to my CASPA.

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_