

FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

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



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I. Executive Summary

The purpose of this report is to assess the Washington State Plan's performance for Fiscal Year (FY) 2021, and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports. As part of this comprehensive evaluation, an on-site review was conducted of the Washington, Division of Occupational Safety and Health's (DOSH) enforcement, consultation, and workplace retaliation case files.

The Washington State Plan continued to reduce the number of worker fatalities this year. A workplace fatality rate that was 1.0% below the national average for 100,000 workers was achieved in 2020 and has been below the national average for 25 years. An example of the State Plan's initiative was its response to the COVID-19 pandemic. The State Plan was able to enforce COVID-19 protections under the Governor's proclamations and public health orders much earlier in the pandemic than the Occupational Safety and Health Administration (OSHA) and other states. The amount of work related to the pandemic affected the State Plan's enforcement and outreach efforts. DOSH quickly moved to online training platforms and was able to maintain its robust training program for current and new employees.

All public and private consultation is provided under 100% state funding. The consultation program provided effective services to employers in Washington. During FY 2021 DOSH conducted 1,833 consultation visits and 443 were COVID-19 related. The State Plan focused its efforts on the agriculture and logging industries, Process Safety Management (PSM) facilities, and COVID-19 outreach in public schools.

Education and outreach efforts, focused on workplace injury and illness prevention, continue to have a significant and growing impact. DOSH held its Governor's Industrial Safety Conference, Agriculture Safety Day, and Construction Safety Day virtually in 2021.

In May 2021, the State Plan filed updated emergency rules to protect farmworkers living in temporary housing from COVID-19. This was the third update to the rules since they were enacted in May 2020. The key updates to the rules concerned medical monitoring and fully vaccinated workers living in group shelters.

In July 2021, the State Plan filed an emergency rule to provide increased protection for employees exposed to extreme heat, including those working in agriculture, construction and other outdoor industries. The emergency Outdoor Heat Exposure rule clarified proactive steps that employers must take to prevent outdoor workers from suffering heat-related illness. Also in July 2021, the State Plan filed emergency rules to help protect employees exposed to wildfire smoke.

To monitor new hire retention, DOSH created a database to track new hires starting in July 2017. After DOSH increased compensation in 2017, new hire retention improved. Turnover decreased from 53% separation in FY 2018 to 18% in FY 2021.

OSHA identified five findings and eleven observations during this evaluation period. Three findings were new, two were continued. Two findings from FY 2020 were reclassified as observations. One observation from FY 2020 was closed. One observation from FY 2020 was converted to a finding. Three observations from FY 2020 were continued. Six observations were new. Appendix A describes new and continued findings, and recommendations. Appendix B describes observations subject to continued monitoring, the related federal monitoring plan, and closed observations. Appendix C describes the status of previous findings with associated completed corrective actions.

II. State Plan Background

A. Background

The State of Washington, under an agreement with OSHA, operates an occupational safety and health program through its Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH). The Revised Code of Washington (RCW), Title 49, Chapter 49.17, Washington Industrial Safety and Health Act (WISHA), was established in accordance with Section 18 of the Occupational Safety and Health Act (OSH Act) of 1970 and took effect in 1973. The Secretary of Labor certified that the State Plan had completed all of the required developmental steps in 1982. The Washington State Plan has not sought 18(e) final approval.

The Director of the Washington State Department of Labor and Industries, Joel Sacks, was appointed by the governor, and serves as the State Plan designee. The L&I Assistant Director, Anne Soiza, retired during the evaluation period. Craig Blackwood was named Acting Assistant Director for DOSH and served in that position until January 2022, when he was named Assistant Director and designated by statute under Chapter 43.22.040 RCW as the Supervisor of Industrial Safety and Health (head of DOSH). The Assistant Director has authority and responsibility for administration of Washington's occupational safety and health program and directs both central office and regional operations.

DOSH establishes policy, provides technical guidance, writes standards, develops and provides internal and external training, monitors and evaluates programs, conducts inspections, and provides consultation services in addition to non-OSHA public safety activities. All on-site consultation (both public and private) services are provided through 100% state funding. There are no consultation services under a Section 21(d) cooperative agreement. DOSH includes its consultation program under a Section 23(g) grant agreement but uses 100% state funds for those services.

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

Over the years, a number of safety and health standards have been adopted that differ from the OSHA counterpart. Examples include rules for crane safety, respiratory protection, aerial lifts, and agriculture. In addition, a number are state initiated, such as requirements for written safety and health programs, safety committees, and heat-related illnesses.

The initial base award to fund the program was \$7,590,700 in federal funds. The federal base award was increased by \$102,400 in April 2021. One-time only awards in the fourth quarter increased the federal share of the grant by \$405,857. The state matched the federal funds and provided an additional \$39,036,110 for a total grant allocation of \$55,235,024. The state reported final expenditures to be \$45,550,360 (\$8,089,957 federal, \$8,089,957 state match, and \$29,352,446 in 100% state funds – direct costs). The grant supported a total of 413 positions that included 138 enforcement compliance positions (99 safety and 39 health), and 49 consultant positions (32 safety and 17 health). DOSH included its consultation program under the 23(g) grant agreement, but 100% state funding was used for all on-site consultation (both public and private) services. No consultation services were provided under a Section 21(d) Cooperative Agreement.

B. New Issues

The State Plan continued to be proactive in protecting workers from COVID-19 and continued to receive complaints related to COVID-19. The State Plan did not adopt the OSHA COVID-19 Emergency Healthcare ETS but did adopt enforceable requirements to address COVID-19 hazards prior to OSHA's decision to issue an ETS. OSHA is working with DOSH to ensure its requirements are as at least as effective as OSHA requirements. In May 2021, the State Plan filed updated emergency rules to protect farmworkers living in temporary housing from COVID-19. This was the third update to the rules since they were enacted in May 2020. The key updates to the rules concern medical monitoring and fully vaccinated workers living in group shelters.

In July 2021, the State Plan filed an emergency rule to provide increased protection for employees exposed to extreme heat, including those working in agriculture, construction and other outdoor industries. The emergency Outdoor Heat Exposure rule clarifies proactive steps that employers must take to prevent outdoor workers from suffering heat-related illness. Also in July 2021, the State Plan filed emergency rules to help protect employees exposed to wildfire smoke.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 was a comprehensive year; therefore, OSHA conducted an on-site evaluation and case file review. A ten-person OSHA team, divided into enforcement, consultation, and whistleblower protection sub-teams, conducted the on-site case file review at the Washington State Plan office from November 29 to December 3, 2021. The team reviewed 325 safety and health inspection, consultation, and whistleblower protection case files. Case files were randomly selected from closed inspections, whistleblower protection investigations, and consultation visits completed during the evaluation period (Oct 1, 2020, through September 30, 2021). The selected population included:

Inspection case files (121):

- Twenty-one (21) fatality
- Thirty (30) program planned
- Seven (7) programmed related
- Sixteen (16) complaint
- Thirty-five (35) referral
- Eleven (11) unprogrammed related
- One (1) follow-up

Whistleblower protection case files (120):

- Eighty (80) administratively closed
- Twenty-six (26) dismissed
- One (1) settled other
- Five (5) settled
- Eight (8) withdrawn

Consultation files (83):

- Fifty-eight (57) private sector
- Twenty-six (26) state and local government employers sector

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures Report (Appendix D, dated 12/8/2021)
- State Information Report (SIR, dated 11/8/2021)
- Mandated Activities Report for Consultation (MARC, 10/29/2021)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) that can be either a single number, or a range of numbers above and below the national average. SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 SAMM Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

- a) Training – The DOSH Training Unit adapted to distance learning in spring 2020 and continued this format through the end of the evaluation period; 100% of offerings are online. DOSH trained 52 new hires in the consultation and compliance programs. The training team provided two Advanced Accident Investigation Classes (AAIC) and industrial hygiene sampling equipment training. DOSH offered training on time management, technical writing, accident investigation, machine guarding, advanced PSM, scaffolding, wind turbine safety, and tower climber rescue. In 2020 and 2021, the annual DOSH Symposium was held online. The Symposium is a series of technical courses for DOSH employees. (SOAR 2020 and 2021)

DOSH broke ground at the site of the new DOSH Lab and Training Center. The Training Center will allow more students to attend training classes at one time, utilizing two indoor training rooms that allow for both in-person and virtual training. In addition, the Training Center includes indoor and outdoor areas large enough to demonstrate heavy earthmoving equipment, cranes, scaffolding and other construction equipment.

- b) OSHA Information System (OIS) – DOSH maintains its own data collection system through the WISHA Information Network (WIN), which is set-up to transfer data to OIS. The WIN system is a web-based application that allows for the creation of electronic case files. The system integrates all the resources for Compliance Safety and Health Officers and managers to track various aspects of an inspection from inception through completion. Management

used the WIN system to generate reports to track and evaluate the effectiveness of their enforcement programs. For the whistleblower protection program, the State Plan utilized OSHA's WebIMIS. No issues were noted with data input.

- c) State Internal Evaluation Program Report – In the year ending September 30, 2021, DOSH Internal Audit completed five audits. Two audits assessed certification programs not required by OSHA. DOSH completed one consultation project, working with compliance staff and with L&I's Business Intelligence Team to develop an online Employer History Tool to make penalty calculations more accurate and consistent. DOSH completed a self-assessment of its program to assure quality and integrity, using resources from the Institute of Internal Auditors. Finally, DOSH senior managers created a federal fiscal year risk-based audit plan.
- d) Staffing – The State Plan received 23 new legislatively funded compliance inspector positions spanning the period from July 2017 through June 2021. The positions have been funded on a phased in basis spread over four years, so not all of the new positions can be filled as of yet due to the funding schedule. As of July 1, 2021, the on-board staffing was at 84% (compared to 79% last year) of the state authorized compliance positions and 94% (compared to 94% last year) for authorized consultation positions. Of 96 authorized safety compliance positions, 85 were filled. Of 47 authorized health compliance positions, 35 were filled. In consultation, of 31 authorized safety positions, 30 were filled. Of 17 authorized health consultation positions, 15 were filled. (FY2022 23(g) Grant Application)

2. ENFORCEMENT

Complaints - The section in DOSH's Field Operations Manual (FOM) that defines a formal complaint is identical to OSHA's definition. However, there are differences in the definition for non-formal complaints; specifically, the classification of a referral, which affects the handling of allegations from some sources. The criterion for measuring complaint responsiveness is imminent danger complaint inspections must be initiated within one workday; serious complaint inspections must be initiated within 15 working days and other-than-serious complaint inspections must be initiated within 30 working days; and phone/fax responses must be initiated within five working days. The SAMM report does not separate the results based on these tiers. The results, with the source of the information identified, were as follows:

- According to SAMM Appendix D, DOSH responded to 93.44% (57 of 61) of imminent danger complaints and referrals within one working day (SAMM 3).
- The average amount of workdays for DOSH to initiate complaint inspections was 8.83 days (SAMM 1a). This is an improvement compared to the last comprehensive FAME data, when the average was 9.06 days.
- The average amount of workdays for DOSH to initiate phone/fax investigations was 4.12 days (SAMM 2a). This was slower compared to the last comprehensive FAME data, which was 3.23 days, but was still within the goal of 5 days.

Imminent danger - DOSH explained during quarterly meetings that imminent danger outliers are due to work stoppages, work ending for the day when DOSH arrived, or

employer no longer on site. DOSH opened inspections on the day work resumed. For the employer that was no longer on site, DOSH opened by phone and was able to conduct the inspection virtually.

Issues gaining entry – There were two denials of entry (SAMM 4). The first outlier was a construction site with workers on scaffolding without a railing and the inspector was denied entry. After review, the workers were within code for the height of the scaffolding, and this was closed out. The second outlier was a Concrete Batch Plant inspection from the safety scheduled list. The safety compliance officer did enter the office/control room and was able to see various machines and did not observe any obvious hazards. They were denied entry and did not pursue a warrant. Later in the year, an industrial hygienist went for an inspection and was not denied entry. DOSH normally pursues a warrant whether there are hazards or not if there's a denial of entry. However, in this case, the health inspection that happened after mitigated the need for a warrant.

Fatalities - OSHA reviewed 19 closed fatality cases during the onsite review. DOSH determined that 5 of 19 fatalities were not work related. In 10 of 14 (71%) of cases where DOSH determined the fatality was work related and next of kin letters were appropriate, OSHA was not able to locate next of kin letters in the case files. There was also no indication on the diary sheet that letters were or were not sent. While it is possible that some of the letters were in the confidential section of the case file, OSHA will track this as a new observation.

Observation FY 2021-OB-01: In FY 2021, in 10 of 14 (71%) of case files where next of kin letters were appropriate, the letters were not included in the file.

Federal Monitoring Plan: OSHA will review fatality case files in the next cycle to determine if next of kin letters are being sent out and maintained.

None of the reviewed fatality case files were “no inspection” or “no jurisdiction”. Of the 41 work related fatalities reported in SAMM 10, DOSH responded to 32 (78.05%) within one workday. From the case file review: Of the 20 closed files reviewed, six were not responded to within one day; DOSH was not notified of the fatality in a timely manner in five cases; citations for failing to notify were issued in three cases. Late responses are related to COVID-19 for a variety of reasons. DOSH struggled with late reporting or late onset due to COVID-19 and the inability to inspect on site depending on potential exposure risks to DOSH staff. DOSH indicated that some COVID-19 fatalities were not initiated within a day because of a misunderstanding that those fatalities were being handled differently. Others involved determining whether the fatality was work related before opening the inspection.

Washington's overall fatality rate in 2020 was 2.5 fatalities per 100,000 workers, which was lower than the national rate of 3.4 fatalities per 100,000 workers. The rates in Washington by sector were as follows: Agriculture, forestry, fishing, and hunting – 11.4; Construction – 8.1; Manufacturing – 1.4; Wholesale and retail trade – 2.0; Transportation and Utilities – 3.2; Financial activities – 3.0. (BLS December 16, 2021)

Targeting and Programmed Inspection – The percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted compared to the number of

employer establishments in the state. DOSH's enforcement presence in FY 2021 was 2.88%. This was more than double the high end of the FRL range of +/- 25% of the three-year national average of 0.74% to 1.24%. DOSH engages in enforcement activity with employers at a rate that exceeds the three-year national average.

The inspection case file review indicated that citations were issued for apparent violations, and violations were adequately documented and supported.

The FY 2021 annual performance plan goal was to conduct 5,100 enforcement inspections (SAMM 7). The number of safety inspections conducted was 3,571 (89%) of the goal and below the FRL range of 3,779.10 to 4,176.90; the number of health inspections was 868 (77%) of the goal and below the FRL range of 1,065.90 - 1,178.10. The total of 4,439 inspections was 87% of the goal. DOSH's COVID-19 related response efforts, prioritization of work, as well as limitations of sending vulnerable staff into the field had an impact on this goal.

DOSH Goal Related to Targeting and Emphasis Programs from the 2021 23(g) Grant Application and the 2021 SOAR:

- DOSH resources are focused on these high hazard industries: agriculture, construction, logging, and healthcare.
- Remain in top ten for lowest construction state fatality rate. Washington has ranked among the top 10 states with the lowest fatality rate in construction for at least the past 14 years. According to the 2020 CFOI report, Washington State ranked 9th lowest among all participating states (41).
- Expand staffing to focus on agriculture. The compliance program created and has begun to staff a new unit dedicated to agricultural inspection work.
- Increase the number of agriculture inspections and consultations to 7%. DOSH conducted 354 agriculture inspections and 114 agriculture consultations – 10.3%
- Conduct at least 30 PSM safety or health inspections/consultations. Conducted 87 inspections and four consultations. Two new PSM compliance positions hired.

In-compliance inspections - The FRL for percent in-compliance for safety inspections was +/- 20% of the one-year national average of 31.65%, which equaled a range of 25.32% to 37.98%. The Washington State Plan's percent in-compliance for safety was 44.85%, which was substantially higher than the FRL. The FRL for percent in-compliance for health inspections was +/- 20% of the one-year national average of 40.64%, which equaled a range of 32.51% to 48.77%. The Washington State Plan's percent in-compliance for health was 28.37%, which is below the FRL (SAMM 9).

Explanation: The Washington State Plan's high in-compliance rates for safety were attributed to the impact of COVID-19 response and a larger number of new hires in training. OSHA will continue to monitor this metric during quarterly meetings, but performance in

2021 did not rise to the level of an observation or finding. DOSH's performance on the health in compliance rate was positive, as it indicated that DOSH was reaching employers with hazardous worksites and was identifying hazards at a rate greater than the national average. DOSH described significant cases in the 2021 SOAR.

DOSH issued citations in a timely manner with an average safety lapse time of 41.30 days, which was better than the FRL range of 41.94-62.90. The average health lapse time of 53.67 days was within the FRL range of 52.88 to 79.32 (SAMM 11).

Citations and Penalties - The OSHA case file review found that DOSH provided adequate evidence to support violations. In 120 of 121 (99%) of inspection files reviewed, citations were issued for all apparent violations. The outlier was discussed with DOSH for its review and retraining of the CSHO if necessary.

DOSH cited 4,023 serious, willful, repeat, and/or unclassified (SWRU) violations and 3,718 other-than-serious (OTS) violations for 4,439 inspections. The average number of SWRU violations cited per inspection (SAMM 5a) was 1.58 and was within the FRL range of 1.42 to 2.14. The average number of OTS violations cited per inspection (SAMM 5b) was 1.46, which was above the FRL range of 0.73 to 1.09. The case file review indicated that classification of violations was in accordance with policies and procedures. Additionally, a major contributing factor for the high number of OTS violations was DOSH's ability to cite employers for deficiencies in its written safety and health programs, which are classified as OTS. Compared to the 2020 FAME, the number of SWRU violations per inspection increased from 1.35 to 1.58, which indicates that DOSH has improved targeting of inspections and/or CSHO training on identification of hazards. From 2020 to 2021 the number of OTS violations per inspection decreased from 1.91 to 1.46.

The FRLs for average penalty are based on +/- 25% of the three-year national average. The average current penalty per serious violation in the private sector for all employers (1-250+ workers) was \$1,752.27, which was \$573.01 below the lower end of the FRL range of \$2,325.28 to \$3,875.46 (SAMM 8). The State Plan was below the FRL level for all employer sizes. DOSH inspection targeting continued to be impacted by the COVID-19 pandemic in 2021, with only 25.26% of private sector safety and 12.23% of private sector health inspections being programmed (SIR 1a). DOSH continued to direct the majority of its resources towards responding to unprogrammed complaints and referrals. As the OSHA file review did not reveal any serious deficiencies in classification of violations or issuance of violations for apparent violations, performance on average penalties does not rise to the level of an observation or finding at this time. OSHA will continue to review this metric during quarterly meetings.

Table A shows the average current penalty per serious violation based on the number of workers controlled by an establishment and summarizes the State Plan's average penalties compared to the three-year national average and the FRL.

Table A
Average Serious Penalty by Employer Size

Number of Workers	WA DOSH FY 2021	Three-Year National Average	FRL (Plus or Minus 25% of the three-year national average)
1-250+	\$1,752.27	\$3,100.37	\$2,325.28 to \$3,875.46
1-25	\$1,255.00	\$2,030.66	\$1,523.00 to \$2,538.33
26-100	\$1,820.23	\$3,632.26	\$2,724.20 to \$4,540.33
101-250	\$2,660.15	\$5,320.16	\$3,990.12 to \$6,650.20
250+	\$3,440.92	\$6,575.70	\$4,931.78 to \$8,219.63

Abatement - The policies and procedures in the DOSH Compliance Manual ensured that reasonable abatement dates were set, abatement was tracked, and proper documentation was obtained. All case files reviewed contained appropriate documentation of abatement. Follow-up inspections were conducted as necessary. The DOSH annual performance goal of having 95% of serious hazards verified abated within 14 days of the abatement date was met. For FY2021, 95.9% (3,302 of 3,444) of serious violations were abated and verified within 14 days of the abatement dates (SOAR 2021).

Worker and Union Involvement - The DOSH Compliance Manual requires that workers are given the opportunity to participate either through interviews, or by having worker representatives accompany CSHOs during the inspection. Workers are also afforded the opportunity to privately express their views about the workplace. In addition, the DOSH Compliance Manual requires inspection results to be provided to the union, or other labor representatives and complainants. However, according to SAMM Appendix D, in only 91.19% of initial inspections did a worker representative participate in the walk around inspection, and/or did the compliance officer conduct and document worker interviews. This was lower than the FRL of 100% (SAMM 13). During the case file review, in four of 81 cases (5%) of worker interviews weren't documented, and in at least four of 81 cases, the only worker interviewed was a manager or supervisor. This does not meet the requirement for DOSH to interview a representative number of non-supervisory employees, as outlined in Chapter 3 of the DOSH Compliance Manual. Performance below the federal review level on Measure 13 is an ongoing issue that the State Plan has worked to correct over several years; however, as performance continues to decline, OSHA will monitor this as a new observation in FY 2021.

Observation FY 2021-OB-02: In FY 2021, in 391 of 4,028 (8.81%) of initial inspections, DOSH did not ensure worker involvement (SAMM 13).

Federal Monitoring Plan: OSHA will continue to work with DOSH to determine the cause or causes of low performance on SAMM 13 and will review SAMM data during quarterly meetings.

Eighteen case files indicated a union site. Documentation indicated of those, eight participated in the opening conference, six participated in the walk around, and seven participated in the closing conference. In 10 of 18 (56%) of files a union was on site but did not participate in the inspection, and the reason that the union didn't participate was not noted in the case file. This is a new observation in FY 2021.

Observation FY 2021-OB-03: In FY 2021, in 10 of 18 (56%) of inspection case files where union workers were on the job site, the union did not participate in the inspection and there was no explanation in the case file regarding the lack of participation.

Federal Monitoring Plan: OSHA will discuss this concern with DOSH during quarterly meetings and will conduct a focused case file review in FY 2022.

3. REVIEW PROCEDURES

Informal Conferences - The procedures for informal and formal review of appealed Citation and Notices (C&N) are known as the Reassumptions Program. The Reassumptions Program is similar to OSHA's informal conference with the exception of the timeframes, which are different. Once a citation is delivered to an employer, the employer has 15 working days to file an appeal. If the case is appealed and DOSH reassumes jurisdiction, the Corrective Notice of Redetermination (CNR) must be issued in 30 working days. However, with the agreement of both parties, the CNR can be extended an additional 45 working days. The additional time allows more cases to be resolved by the department, instead of having to send them to the Board of Industrial Insurance Appeals (BIIA) when the maximum number of days is reached. The administrative rules allow for the electronic filing of appeals.

Under the reassumption process, an informal conference is held with the employer, and modifications to the C&N are documented in the CNR. When a reassumption hearing is held, the proceedings are documented in a written narrative that explains the hearings officer's decision, and supports any changes made to the citations.

The enforcement case file review did not reveal any issues or deficiencies related to informal settlement proceedings. There were 17 inspections in the list of files reviewed that resulted in a reassumption hearing. In each case, where penalties were reduced or violations reclassified, the reasons were well documented in the narrative of the reassumption hearing officer's findings.

SAMM 12 measures the percent penalty retained, and the further review level was plus or minus 20% of the three-year national average, which was 58.72% to 79.44% in FY 2021. According to SAMM Appendix D, DOSH retained 100% of penalties in FY 2021; however, this metric does not transfer correctly from the WIN system to OIS, and SAMM 12 is not accurate. According to data provided by DOSH, they retained 67% of penalties in FY2021, which was within the FRL range.

Formal Review of Citations - The Administrative Rules and Administrative Manual outline procedures that afford employers the right to administrative and judicial review of alleged violations, initial penalties, and abatement periods. Workers and their representatives are

provided the opportunity to participate in review proceedings, and to contest citation abatement dates.

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

Citations and penalties were upheld during the formal review process. The enforcement case file review did not reveal any issues or deficiencies related to formal settlement proceedings.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

Standards Adoption - The rulemaking process may be initiated by OSHA, the State Plan, or rule petition. When a rulemaking project is undertaken, the state has provisions for expedited, emergency, and permanent rulemaking.

Expedited rulemaking is available when the rules specifically apply only to internal government operations, incorporates federal or state law or other agency rules, correction of typographical errors, the rule is explicitly and specifically dictated by statute, or was developed through negotiated or pilot rulemaking.

In the expedited process, the agency files the proposed rule with the Code Reviser for publication in the Register and sends the notice to interested parties, but no hearing is scheduled. If any person objects to the expedited process within 45 days of publication, the agency considers the notice to be the same as the proposal notice used in the basic rulemaking process.

The emergency rulemaking process may be used when a rule is needed before the standard rulemaking process can be completed. To use this process, the state must find, with good cause that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of public health, safety or general welfare, or that state or federal law or rule, or a federal deadline for receipt of funds, requires immediate adoption of a rule. Emergency rules do not require public notice or hearing. They usually take effect when filed with the Code Reviser. Emergency rules can remain in effect for up to 120 days after filing. An agency can re-file the emergency rule if the agency has started the permanent rulemaking process.

OSHA issued seven standards that required a state intent response in FY 2020 and FY 2021, and DOSH was timely with providing its intent for six of the seven (86%). The one standard where DOSH did not provide intent timely was due to a delay in processing the notice in the State Plan Application. OSHA issued five standards that required adoption from FY 2020 to FY 2021 and DOSH adopted three of the five. In addition, two standards that required adoption from FY 2019 were not adopted during this report time frame. Delayed adoption of OSHA standards is a new finding in this report.

Finding FY 2021-01: OSHA standards were not adopted by the adoption due date.

Recommendation: DOSH should ensure each standard is adopted by the due date.

Table B
Status of FY 2020 and FY 2021 Federal Standards Adoption
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
Final Rule on Walking- Working Surfaces and Personal Protective Equipment (Fall Protection Services) 29 CFR 1910 11/18/2016	1/18/2017	1/18/2017	Yes	No	5/18/2017	Adopted 4/21/2020, effective 10/1/2020
Final Rule on Crane Operator Certification Requirements 29 CFR 29 CFR 1926 (11/9/2018)	1/9/2019	1/8/2019	Yes	No	5/9/2019	Not yet adopted
Final Rule on the Standards Improvement Project - Phase IV 29 CFR 1904,1910,1915,1926 (5/14/2019)	7/13/2019	7/9/2019	Yes	No	11/14/2019	Not yet adopted
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	2/6/2020	Yes	Yes	7/15/2020	1/21/2019
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	9/10/2020	Yes	No	1/14/2021	Not yet adopted
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	10/27/2020	Yes	No	2/27/2021	Not yet adopted
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	1/25/2021	Yes	Yes	7/14/2021	Adopted: 12/18/2018 Effective: 1/15/2021
Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/6/2021	Yes	No	7/21/2021	Not yet adopted
<i>Adoption Encouraged</i>						
Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	12/9/2020	No	n/a	n/a adoption not required	n/a
Final Rule on Cranes and Derricks in Construction: Railroad Roadway	11/14/2020	11/5/2020	Yes	No	n/a adoption	Not yet

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Work 29 CFR 1926 (9/15/2020)					not required	adopted

Residential Fall Protection

Finding FY 2021-02 (FY 2020-01): DOSH’s standards for fall protection in residential construction are not at least as effective as that of OSHA’s.

Recommendation: DOSH should implement a fall protection standard that is at least as effective as the federal standard.

Status: In FY2021, DOSH agreed to update its universal fall protection standard to resolve concerns from OSHA regarding sections that OSHA does not consider to be “at least as effective” as the federal fall protection rules. According to the DOSH rulemaking summary provided to OSHA on February 9, 2020, DOSH intends to file the CR-101 to initiate rulemaking in the summer of 2022.

Federal Program Change (FPC) Adoption - DOSH was timely on its intent response for 12 of 13 (92%) of the federal program changes (FPCs) that required an intent response in FY 2020 and FY 2021. DOSH adopted timely one of two (50%) of federal program changes (FPCs) that required identical adoption in FY 2020 and FY 2021. DOSH has not yet adopted the Respirable Crystalline Silica NEP (CPL 03-00-023). Seven FPCs required equivalent adoption in FY 2020 and FY 2021 and DOSH adopted four. The State plan informed OSHA that its existing programs were at least as effective as OSHA for the Field Operations Manual CPL 02-00-164, Site-Specific Targeting (SST) CPL 02-01-062, Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165.

Table C
Status of FY 2020 and FY 2021 Federal Program Change (FPC) Adoption

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/6/2020	Yes	No	6/10/2020	4/1/2019
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	3/30/2020	Yes	No	8/4/2020	Not yet adopted
<i>Equivalency Required</i>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	6/10/2020	No	n/a	10/11/2020	DOSH does not intend to adopt and says current

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
						policy is ALAEA.
Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	8/24/2020	Yes	Yes	12/22/2020	12/17/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	7/6/2021	No	n/a	6/12/2021	DOSH does not intend to adopt and says current policy is ALAEA.
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	5/17/2021	Yes	No	9/19/2021	9/17/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	7/8/2021	Yes	No	7/28/2021	7/7/2021
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/26/2021	Yes	No	12/28/2021	11/27/2018 (DOSH stated that existing directive ALAEA)
Revised National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)	7/22/2021	7/21/2021	Yes	No	8/7/2021	8/25/2021
<i>Adoption Encouraged</i>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	3/10/2020	Yes	No	n/a adoption not required	7/30/2020
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	7/27/2020	No	n/a	n/a adoption not required	n/a

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	4/19/2021	No	n/a	n/a adoption not required	n/a
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	8/25/2021	No	n/a	n/a adoption not required	n/a

5. VARIANCES

Each employer requesting a variance from the written code is required to propose an alternative means of protection that is at least as effective. If the employer's variance application does not propose an alternative method to protect workers or does not provide the needed information throughout the process in a timely manner, the variance will be denied; however, the employer can resubmit a request to be evaluated with the required information.

There were nine permanent variances and five temporary variances granted during FY 2020 and FY 2021. Twenty-two variance requests were denied.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

Penalties and sanctions are imposed on employers in state and local government agencies in an identical manner as the private sector industry. In FY 2021, 3.94% of inspections were conducted in state and local government workplaces, which was below the FRL range of 4.75% to 5.25% (SAMM 6). This is an improvement over the percentage reported in the 2020 FAME, which was 3.02%. DOSH doesn't have an inspection targeting system that is specific to state and local government workplaces, so the number and percent inspected depends on whether these types of workplaces were targeted based on NAICs codes or complaints. As DOSH is still outside of the FRL range and is not specifically targeting the state and local government workplaces, Observation FY 2020-OB-02 will be continued.

Observation FY 2021-OB-04 (FY 2020-OB-02): In FY 2021, DOSH conducted 3.94% (175 of 4,439) of inspections in state and local government workplaces (SAMM 6), which was below the Further Review Level (FRL) range.

Federal Monitoring Plan: OSHA will monitor the number of inspections conducted in state and local government workplaces during quarterly meetings.

7. WHISTLEBLOWER PROGRAM

Claims of workplace retaliation for reporting occupational safety and health issues are investigated under Section 49.17.160 of the WISHA. During FY 2021, the whistleblower protection program was staffed by one supervisor and four investigators. Investigators attended

several mandatory and recommended classes during the first three years of employment, as outlined in the Discrimination Investigations Manual (DIM).

Based on a case file review, OSHA’s Whistleblower Investigations Manual policies and procedures are outlined in the State Plan’s DIM and was generally followed.

The average number of days to complete a workplace retaliation investigation was 74 days (SAMM 16), lower than the national average of 325 days, and below the FRL of 90 days. One hundred percent of the retaliation investigations were completed within 90 days (SAMM 14), which met the FRL of 100% and was better than the national average of 27%. DOSH’s merit rate fluctuated between 8% - 24% over the last three years (Table D). In FY 2021, the merit rate was 8% (SAMM 15), which was below the FRL range of 16% - 24%. OSHA will continue to review retaliation metrics during quarterly meetings with the State Plan

Table D
DOSH Performance on Retaliation SAMM Measures 2019 to 2021

	FY 2019	FY 2020	FY 2021	2021 FRL
Completed Within 90 Days (SAMM 14)	100%	99%	100%	100%
Merit Cases (SAMM 15)	16%	24%	8%	16% to 24%
Average Number of Calendar Days to Complete Investigation (SAMM 16)	70	62	74	90

When a Respondent’s position statement is received, the DIM, Pages 19-20, Section 14, requires that Complainants shall be contacted to resolve discrepancies or rebut the Respondent’s defense. There were 15 cases where no evidence was found that complainants were contacted to resolve discrepancies and rebut respondents’ defense. Finding FY 2020-03 is still open and will continue this year.

Finding FY 2021-03 (FY 2020-03): In 55% (15 of 27) of retaliation case files, there was insufficient evidence in the case file to confirm complainants were given the opportunity to resolve discrepancies and rebut respondents’ defense.

Recommendation FY 2021-03: DOSH should ensure case files are documented to show that complainants were given the opportunity to resolve discrepancies and rebut respondent’s defense.

During the retaliation case file review, OSHA noted that filing dates were not accurately entered into WebIMIS. In 39 of 120 (32%) of case files, the date entered in WebIMIS was the date the retaliation unit received the complaint, rather than the date the complaint was originally filed, if received at a different location, or the postmarked date. The DIM, on page 7, section C.3.a, requires that the original filing date or the postmarked date be used. It is important to ensure the correct filing date is being used to avoid administratively closing a complaint for being untimely. Due to marked improvement over the FY 2019 review, when 46 of 79 (58%) of cases reviewed didn’t have accurate filing dates entered into IMIS, Finding FY 2020-02 will be changed to an observation.

Observation FY 2021-OB-05 (Finding FY 2020-02): In 33% (39 of 120) of retaliation case files, accurate filing dates were not entered into WebIMIS.

Federal Monitoring Plan: During quarterly meetings, OSHA will monitor that correct filing dates are entered in to WebIMIS.

When calculating dates to determine whether or not complaints are filed timely, the DIM, Page 7, Section C.3.a., states the first day of the time period is the day after the alleged retaliatory decision is both made and communicated to the complainant, and if the last day of the statutory filing period falls on a weekend or a federal holiday, or if the relevant OSHA office is closed, then the next business day will count as the final day. In two cases, evidence indicated complaints were filed timely under this guidance, but were administratively closed. In one case, DOSH started counting on the day of the adverse action, not the day after. In the second case, there was no documentation of the actual filed date. The complaint was signed timely, and this date should have been used instead of the “received” date stamp. While this was noted in the FY2019 review, a discussion with DOSH noted in the second case DOSH did not receive a copy of the letter, fax sheet, or email clearly stating when the complaint was filed, only a date stamp from the file room. DOSH stated they would work with the file room to correct this issue. Due to this information, Finding FY 2020-04 was changed to an observation.

Observation FY 2021-OB-06 (Finding FY 2020-04): In 3% (two of 80) of administratively closed case files, complaints were improperly closed for untimeliness; however, both complaints were filed timely.

Federal Monitoring Plan: OSHA will conduct a focused file review in 2022.

Through the on-site case file review and interviews, it was determined that injury reporting was recognized as a protected activity. An Interagency Agreement between DOSH and the Discrimination and Claim Suppression Investigation Unit (IID), regarding complaints alleging retaliation for injury reporting and/or filing workers’ compensation claims, was put into effect October 1, 2018. The agreement states that DOSH is responsible for investigating discrimination against an employee for exercising any rights afforded by WISHA, under RCW 49.17.160; IID is responsible for investigating discrimination against filing or communicating the intent to file a claim for workers’ compensation.

WAC, Title 296, Chapter 296-27 contains rules to record work-related injuries and illnesses and rules to report any work-related fatality, inpatient hospitalization, amputation, or loss of an eye. In respect to worker injuries, the Interagency Agreement between DOSH and IID indicates generally, that DOSH investigates claims of retaliation for reporting a workplace injury, and IID investigates claims of retaliation for filing a worker’s compensation claim based on a workplace injury.

Again, during the retaliation case file review, it was unclear if there is a process in place to make this determination within DOSH or IID and ensure the right cases are going to the appropriate agencies or being investigated jointly as necessary. In four of the cases relating to a work-related injury, DOSH referred the complainant to IID without further analysis if there was any relationship to the work-related injury or for filing a workers’ compensation claim. In addition, for all these types of cases alleging workplace injuries, it was also unclear whether complainants

were notified of their OSHA dual file rights. Therefore, Observation FY 2020-OB-03 was continued.

Observation FY 2021-OB-07 (FY 2020-OB-03): There is no clear evidence that DOSH investigates retaliation for reporting workplace injuries and illnesses or notifies those complainants of their dual file rights, but rather refers the complainants to the Discrimination and Claim Suppression Investigation Unit (IID).

Federal Monitoring Plan: During quarterly meetings, OSHA will monitor retaliation complaints due to reporting of workplace injuries and illnesses are investigated under the 23(g) grant.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

There was one new CASPA submitted and investigated in FY 2021. There were no CASPAs in FY 2020. CASPA WA 2021-01 related to three issues within the whistleblower program: tolling, intake interviews, and deferring to other legal proceedings. The State Plan acknowledged a possible update for the DOSH Discrimination Investigations Manual regarding tolling, agreed that it would ensure every chance was given to a Complainant for an intake interview, and has a better understanding of the deferral process and when to apply it. The State Plan's response to this CASPA was timely.

9. VOLUNTARY COMPLIANCE PROGRAM

The Voluntary Protection Program (VPP) in DOSH is based on a national program of the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) whereby management, labor, and the government establish cooperative relationships. Employers with outstanding occupational safety and health management systems were recognized through the DOSH Voluntary Protection Program (VPP). At the end of FY 2021, there were 29 approved VPP sites in DOSH's jurisdiction, which is consistent with the numbers of sites from previous years.

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

Consultation visits provided in state and local government workplaces are conducted by 100% state-funded consultants. This is unique in that the consultation program is under the Section 23(g) grant agreement, but no 23(g)-grant funding is used for these services.

A total of 166 consultation visits were conducted in state and local government agencies. Of these, 126 (79%) consultation visits were conducted in high hazard industries (MARC 1). A total of 157 (99%) visits were in smaller businesses with fewer than 250 employees (MARC 2A) and 133 visits (84%) were conducted in establishments with fewer than 500 employees (MARC 2B). The consultant conferred with employees in 137 (86%) Initial Visits and 3 (43%) Follow-Up Visits (MARC 3A-3B).

During this evaluation period, 236 serious hazards were identified and 93% of serious hazards were corrected in a timely manner. A total of 81 serious hazards were corrected on-site, 122 within the original time, and 17 within 14 days of the latest correction date. Of these, 86% were corrected within the original timeframe or on-site, exceeding the goal of 65%. No employers were referred to enforcement (MARC 4A-4D).

DOSH Consultation services were impacted by the COVID-19 pandemic. The program received fewer requests for on-site visits, and for state and local government visits, many workers were on telework which impacted the ability to participate in the visit. Overall, the case file review and review

of metrics found that the consultation program provided effective services for state and local government employers in Washington. However, some concerns were noted and are described below.

The review of 26 state and local government workplace consultation files revealed some general concerns with coding and file maintenance. Eight of 26 (31%) files reviewed did not include applicable emphasis codes from the DOSH list of active emphasis codes. In addition, eight of 26 (31%) files were missing one or more types of documentation: six did not include OSHA 300 Logs where required, three did not include the written report to the employer, and two were missing a list of hazards. In addition, three of 18 (18%) files for consultations where program assistance was requested were missing Form 16. Form 16 is DOSH's form equivalent to OSHA's Form 33, the Safety and Health Program Assessment Worksheet. This will be tracked as a new observation in FY 2021.

Observation FY 2021-OB-08: In FY 2021, 8 of 26 (31%) of state and local government workplace consultation files were missing one or more types of documentation: 6 did not include OSHA 300 logs where required, 3 did not include the written report to the employer, 2 were missing a list of hazards, and 3 consultation files where program assistance was requested were missing Form 16.

Federal Monitoring Plan: OSHA will discuss file maintenance concerns during quarterly meetings and will conduct a consultation file review in FY 2022.

The review of state and local government workplace consultation files also revealed concerns with hazard correction and verification. In five of 26 (19%) files, serious hazards were not corrected timely in accordance with the [DOSH Consultation Manual](#). Hazard verification documentation was not included in 7 of 26 (27%) of files, and in two of five (40%) of files where an extension for hazard correction was provided, there was no written request for an extension from the employer, and no interim protection was described. Concerns about hazard correction is a new finding in FY 2021.

Finding FY 2021-04: In FY 2021, in five of 26 (19%) of state and local government workplace consultation files, serious hazards were not corrected timely, in seven of 26 (27%) of files, hazard verification documentation was not included, and in seven of five (40%) of files, where an extension for hazard correction was provided, there was no written request for an extension from the employer, and no interim protection was described.

Recommendation: DOSH should ensure that consultants follow the DOSH Consultation Manual and ensure that serious hazards are corrected timely, or that a written extension is requested by the employer and interim protection is described. DOSH should ensure that documentation verifying the correction of serious hazards is included in the consultation file.

Timeliness of written reports to the employer was a continued observation (FY 2020-OB-05) from the four previous years FAMEs and was converted to a finding in FY 2021.

Finding FY 2021-05: (Observation FY 2020-OB-05): In FY 2021, in 11 of 58 (19%) of private sector consultation files and in six of 26 (19%) of state and local government workplace consultation files, the written reports were not sent to employers within the required timeframe of 15 calendar days.

Recommendation: DOSH should ensure that consultation reports are issued within the timeline required by the DOSH Consultation Manual or ensure that the reason for the delay is described in the consultation file.

Finally, the state and local government workplace consultation file review found some concerns with written reports to the employer. Specifically, in 13 files, consultants did not include a description of working conditions, and in 12 files, injury and illness rates were not compared to national averages. These concerns do not rise to the level of an observation or finding, but OSHA will continue to discuss with DOSH during quarterly meetings.

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

Private sector consultation visits, similar to visits in state and local government agencies, are conducted by 100% state-funded consultants. There are no consultation services under a Section 21(d) cooperative agreement. The consultation program is under the Section 23(g) grant agreement, but no 23(g) grant funding is used for these services.

A total of 1,631 consultation visits were conducted in private sector establishments. Of these, 1,363 (86%) consultation visits were conducted in high hazard industries (MARC 1). A total of 1,546 (98%) were in businesses with fewer than 250 employees (MARC 2A) and 1,455 visits (92%) were conducted in establishments with fewer than 500 employees (MARC 2B). In all consultation visits, the consultant conferred with employees 93% of the time (MARC 3).

During this evaluation period, 3,026 serious hazards were identified and 97% of serious hazards were corrected in a timely manner. A total of 1,285 serious hazards were corrected on-site, 1,419 within the original time, and 224 within 14 days of the latest correction date. Of these, 89% were corrected within the original timeframe or on-site, exceeding the goal of 65%. No employers were referred to enforcement (MARC 4A-4D).

On November 29-December 2, 2021, an on-site review was conducted in the Tumwater Office. The purpose of the visit was to assess the quality of the program's services and its internal quality assurance program. This is in accordance with CPPM (Directive CSP 02-00-004) and 29 Code of Federal Regulations (CFR) Part 1908 – Consultation Agreements. OSHA found that overall the program managers and staff were providing appropriate consultative services and advice to the employers they served.

A total of 57 private sector case files were reviewed, which included both sampling and non-sampling visits. DOSH did not have any START participants during this review period; therefore, no START files were reviewed.

Of the 57 private sector consultation files reviewed, 12 were missing case file documents. Specifically, 9 were missing OSHA 300 Logs, and three were missing Form 16). This will be tracked as a new observation in FY 2021.

Observation FY 2021-OB-09: In FY 2021, 12 of 57 (21%) private sector consultation files were missing one or more types of documentation: nine did not include OSHA 300 logs where required, and 3 consultation files where program assistance was requested were missing Form 16.

Federal Monitoring Plan: OSHA will discuss file maintenance concerns during quarterly meetings and will conduct a consultation file review in FY 2022.

In three of three (100%) of private sector consultation files requesting an extension for hazard verification, the interim protection was not described. This is a new observation in FY 2021.

Observation FY 2021-OB-10: In FY 2021, in three of three (100%) private sector consultation files requesting an extension for hazard verification, the interim protection was not described.

Federal Monitoring Plan: OSHA will discuss extensions for abatement of serious hazards during quarterly meetings and will conduct a consultation file review in FY 2022.

Similar to the state and local government workplace files, the review of private sector consultation files found some concerns with written reports to the employer. Specifically, in 12 files, consultants did not include a description of working conditions, and in 32 files, injury and illness rates were not compared to national averages. These concerns do not rise to the level of an observation or finding, but OSHA will continue to discuss with DOSH during quarterly meetings.

The consultation program uses Form 16 to evaluate non-START employers' safety and health management systems, rather than using a Form 25 referenced in the DOSH Consultation Manual. Both Form 16 and 25 are the DOSH equivalents of OSHA Form 33, which is the Safety and Health Program Assessment Worksheet. The DOSH Consultation Manual explained when and how to use the Form 25, which is no longer relevant, but it did not explain Form 16. The DOSH Consultation Manual should be updated so that it can be a resource to consultants and employers utilizing Form 16. This is a continuing concern from the FY 2019 and FY 2020 FAME.

Observation FY-OB-2021-11 (FY 2020-OB-04): Consultants use Form 16 to evaluate employer safety and health management systems, but the use of Form 16 is not explained in the DOSH Consultation Manual.

Federal Monitoring Plan: OSHA will monitor DOSH to ensure that the DOSH Consultation Manual is updated to explain the use of Form 16.

In 5 of 26 (19%) state and local government workplace consultation files, the written report was not sent timely to the employer. See section 10 of this report for finding language.

Appendix A – New and Continued Findings and Recommendations

FY 2021 WA DOSH Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	OSHA standards were not adopted by the adoption due date.	DOSH should ensure each standard is adopted by the due date.	
FY 2021-02	DOSH’s standards for fall protection in residential construction are not at least as effective as that of OSHA’s.	DOSH should implement a fall protection standard that is at least as effective as the federal standard.	FY 2020-01
FY 2021-03	In 55% (15 of 27) of retaliation case files, there was insufficient evidence in the case file to confirm complainants were given the opportunity to resolve discrepancies and rebut respondents’ defense.	DOSH should ensure case files are documented to show that complainants were given the opportunity to resolve discrepancies and rebut respondent’s defense.	FY 2020-03
FY 2021-04	In FY 2021, in five of 26 (19%) of state and local government workplace consultation files, serious hazards were not corrected timely, in seven of 26 (27%) of files, hazard verification documentation was not included, and in two of five (40%) of files, where an extension for hazard correction was provided, there was no written request for an extension from the employer, and no interim protection was described.	DOSH should ensure that consultants follow the DOSH consultation manual and ensure that serious hazards are corrected timely, or that a written extension is requested by the employer and interim protection is described. DOSH should ensure that documentation verifying the correction of serious hazards is included in the consultation file.	
FY 2021-05	In FY 2021, in 11 of 58 (19%) of private sector consultation files and in five of 26 (19%) of state and local government workplace consultation files, the written reports were not sent to employers within the required timeframe of 15 calendar days.	DOSH should ensure that consultation reports are issued within the timeline required by the DOSH Consultation Manual or ensure that the reason for the delay is described in the consultation file.	FY 2020-OB-05

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 WA DOSH Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB- # or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01		In FY 2021, in 10 of 14 (71%) of case files where next of kin letters were appropriate, the letters were not maintained in the file.	OSHA will review fatality case files in the next cycle to determine if next of kin letters are being sent out and maintained.	New
FY 2021-OB-02		In FY 2021, in 391 of 4,028 (8.81%) of initial inspections, DOSH did not ensure worker involvement (SAMM 13).	OSHA will continue to work with DOSH to determine the cause or causes of low performance on SAMM 13 and will review SAMM data during quarterly meetings.	New
FY 2021-OB-03		In FY 2021, in 10 of 18 (56%) of inspection case files where union workers were on the job site, the union did not participate in the inspection and there was no explanation in the case file regarding the lack of participation.	OSHA will discuss this concern with DOSH during quarterly meetings and will conduct a focused case file review in FY 2022.	New
FY 2021-OB-04	FY 2020-OB-02	In FY 2021, DOSH conducted 3.94% (175 of 4,439) of inspections in state and local government workplaces (SAMM 6), which was below the Further Review Level (FRL) range.	OSHA will monitor the number of inspections conducted in state and local government workplaces during quarterly meetings.	Continued
FY 2021-OB-05	FY 2020-02	In 33% (39 of 120) of retaliation case files, accurate filing dates were not entered into WebIMIS.	During quarterly meetings, OSHA will monitor that correct filing dates are entered in to WebIMIS.	New (Finding FY 2020-02)
FY 2021-OB-06	FY 2020-04	In 3% (two of 80) of administratively closed case files, complaints were improperly closed for untimeliness; however, both complaints were filed timely.	OSHA will conduct a focused file review in 2022.	New (Finding FY 2020-04)

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 WA DOSH Comprehensive FAME Report

FY 2021-OB-07	FY 2020-OB-03	There is no clear evidence that DOSH investigates retaliation for reporting workplace injuries and illnesses or notifies those complainants of their dual file rights, but rather refers the complainants to the Discrimination and Claim Suppression Investigation Unit (IID).	During quarterly meetings, OSHA will monitor retaliation complaints due to reporting of workplace injuries and illnesses are investigated under the 23(g) grant.	Continued
FY 2021-OB-08		In FY 2021, eight of 26 (31%) of state and local government workplace consultation files were missing one or more types of documentation: 6 did not include OSHA 300 logs where required, 3 did not include the written report to the employer, 2 were missing a list of hazards, and 3 consultation files where program assistance was requested were missing Form 16.	OSHA will discuss file maintenance concerns during quarterly meetings and will conduct a consultation file review in FY 2022.	New
FY 2021-OB-09		In FY 2021, 12 of 57 (21%) of private sector consultation files were missing one or more types of documentation: 9 did not include OSHA 300 logs where required, and 3 consultation files where program assistance was requested were missing Form 16.	OSHA will discuss file maintenance concerns during quarterly meetings and will conduct a consultation file review in FY 2022.	New
FY 2021-OB-10		In FY 2021, in 3 of 3 (100%) of private sector consultation files requesting an extension for hazard verification, the interim protection was not described.	OSHA will discuss extensions for abatement of serious hazards during quarterly meetings and will conduct a consultation file review in FY 2022.	New
FY 2021-OB-11	FY 2020-OB-04	Consultants use Form 16 to evaluate employer safety and health management systems, but the use of Form 16 is not explained in the DOSH Consultation Manual.	OSHA will monitor DOSH to ensure that the DOSH Consultation Manual is updated to explain the use of Form 16.	Continued
	FY 2020-OB-01	In FY 2020, 89.2% (3,028 of 3,393) of serious violations were abated and verified		Closed

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 WA DOSH Comprehensive FAME Report

		within 14 days of the abatement date, which did not meet the annual performance goal of 95%.		
	FY 2020-OB-05	In FY 2019, 23.4% (11 of 47) of written reports and 33.3% (2 of 6) of START reports were not sent to employers within the required timeframe of 15 calendar days.*		Converted to Finding

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 Washington DOSH Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	DOSH's standards for fall protection in residential construction are not at least as effective as that of OSHA's.	DOSH should implement a fall protection standard that is at least as effective as the federal standard.	The State of Washington has adopted the Unified Fall Protection Standard and will fully enforce it. We will continue discussions with OSHA. On August 13, 2021, we received a letter from OSHA regarding your concerns with the Washington Unified Fall Protection Standard.	Not Completed	Open (3/1/2022)
FY 2020-02	In FY 2019, in 58% (46 of 79) of retaliation case files, accurate filing dates were not entered into WebIMIS.	DOSH should ensure accurate filing dates are entered into WebIMIS.	The DOSH discrimination program will work to ensure accurate filing dates of retaliation cases are entered into WebIMIS now, and will make any needed updates and/or clarifications to the process of entering filing dates as a part of the broader revision of the Discrimination Investigation Manual scheduled for completion by June of 2022.		Converted to an Observation
FY 2020-03	In FY 2019, in 41% (15 of 37) of retaliation case files, there was insufficient evidence in the case file to confirm complainants were given the	DOSH should ensure case files are documented to show that complainants were given the opportunity to resolve discrepancies and rebut respondent's defense.	The DOSH discrimination program will implement several process changes in response to new laws passed during the 2021 legislative session. These changes will require additional training and a significant update to the DOSH Discriminations Manual. The updated processes, new training and revised manual are scheduled to be completed by June of	Not Completed	Open (3/1/2022)

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 Washington DOSH Comprehensive FAME Report

	opportunity to resolve discrepancies and rebut respondents' defense.		2022.		
FY 2020-04	In FY 2019, in 5% (2 of 42) of administratively closed case files, complaints were improperly closed for untimeliness; however, both complaints were filed timely.	DOSH should ensure that DIM guidance for calculating filing dates of complaints is followed.	The DOSH discrimination program will implement several process changes in response to new laws passed during the 2021 legislative session. These changes will require additional training and a significant update to the DOSH Discrimination Manual. The updated processes, new training and revised manual are scheduled to be completed by June of 2022.		Converted to an Observation

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 DOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	8.83	15 days for serious hazards; 30 days for other-than-serious hazards	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	8.83	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	4.12	5	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	4.12	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	93.44%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	2	0	The further review level is fixed for all State Plans.
5a	Average number of violations per inspection with violations by violation type (SWRU)	1.58	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	1.46	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	3.94%	+/- 5% of 5%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 DOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				4.75% to 5.25%.
7a	Planned v. actual inspections (safety)	3,571	+/- 5% of 3,978	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 3,779.10 to 4,176.90 for safety.
7b	Planned v. actual inspections (health)	868	+/- 5% of 1,122	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,065.90 to 1,178.10 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,752.27	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,255.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,820.23	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,660.15	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,440.92	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in compliance (safety)	44.85%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in compliance (health)	28.37%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 DOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	78.05%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	41.30	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	53.67	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	100%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walk-around representation or worker interview	91.19%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	100%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	8%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	74	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	2.88%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 8, 2021, as part of OSHA's official end-of-year data run.