**FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report**

**Washington Department of Labor and Industries**

**Division of Occupational Safety and Health (DOSH)**



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**Prepared by:**

**U.S. Department of Labor**

**Occupational Safety and Health Administration**

**Region X**

**Seattle, WA**

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## Executive Summary

The primary purpose of this report is to assess the Washington Department of Labor and Industries (L&I) Division of Occupational Safety and Health’s (DOSH) progress in Fiscal Year (FY) 2022, in resolving outstanding findings from the previous FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

The State Plan focuses its resources on the most hazardous industries in Washington including agriculture; logging; construction; healthcare; and electrical utilities and telecommunication.

DOSH continued to respond to challenges related to COVID-19 during this evaluation period, by quickly and effectively developing and implementing program policies designed to continue to protect workers in the state of Washington including DOSH staff.

The Washington State Plan continued to reduce the number of worker fatalities this year. In 2021, the workplace fatality rate was 42% below the national average (2.1 per 100,000 full-time equivalent workers compared to 3.6 per 100,000 full time equivalent workers) and has been for 25 years per the FY 2022 DOSH State OSHA Annual Report (SOAR). The total number of work-related- fatalities was the lowest since 2015.

All public and private consultation services are fully funded by the state. The consultation program provides effective services to employers in Washington. In FY 2022, DOSH conducted 1,874 consultation visits and focused its efforts on the agriculture and logging industries; long term and home health care facilities; and Process Safety Management (PSM) facilities.

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 in person and virtually in 2022. The DOSH Multi-Cultural Safety and Health Outreach Program continued to work with employers, employees, and trade associations in multiple languages.

DOSH provides updates to OSHA on its work related to closing FAME findings and observations at quarterly meetings. They made progress to address the previous five findings and 11 observations from the FY 2021 Comprehensive FAME Report. This follow-up FAME report contains five findings - four continued and one new, and ten observations - nine continued and one new. DOSH completed one finding. OSHA did not identify any new findings or observations in FY 2022. Appendix A describes continued findings, and recommendations. Appendix B describes observations subject to continued monitoring, and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective actions. OSHA will thoroughly review progress related to findings and observations during the case file review scheduled for fall 2023.

## State Plan Background

The State of Washington, under an agreement with OSHA, operates an occupational safety and health program through its Department of L&I, 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 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 L&I, Joel Sacks, was appointed by the Governor, and serves as the State Plan designee. The L&I Assistant Director, Craig Blackwood, is designated by statute under Chapter 43.22.040 RCW as the Supervisor of Industrial Safety and Health overseeing 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 conducting public safety activities not related to occupational safety and health concerns. All on-site consultation services, public and private, are provided through 100% state funds; and 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.

DOSH has adopted several safety and health standards that differ from the OSHA counterpart. Examples include rules for crane safety, respiratory protection, aerial lifts, and agriculture. In addition, DOSH adopted several unique, state-initiated standards, such as requirements for written safety and health programs, safety committees, and heat-related illnesses.

The initial base award to fund the program was $7,693,100 in federal funds. The federal base award was increased by $151,200 in July 2022. A one-time only award in the fourth quarter increased the federal share of the grant by $160,000. The state matched the federal funds and provided an additional $45,659,565 for a total grant allocation of $61,045,765. The state reported final expenditures to be $49,535,852 ($8,004,300 federal, $8,004,300 state match, and $33,527,252 in 100% state funds – direct costs). The grant supported a total of 425 positions that included 143 enforcement compliance positions 96 safety and 47 health, as well as 48 consultant positions 31 safety and 17 health.

**New Issues**

DOSH continued to work on a draft Infectious Diseases rule and conducted preliminary stakeholder outreach with select healthcare groups during 2022. Additionally, DOSH was able to secure funding late in FY 2022 to retain an Occupational Nurse Consultant as a permanent employee. This will allow efforts on this rulemaking project to continue with a goal of engaging all interested stakeholders in 2023.

In early summer 2022 DOSH launched a new webpage, [www.Lni.wa.gov/Teenworkersafety](http://www.Lni.wa.gov/Teenworkersafety) to remind employers, teen workers, and their families about teen worker rights and safety on the job.

DOSH filed emergency outdoor heat exposure and wildfire smoke rules to protect farm and construction workers; roofers; road crews; and anyone else whose job requires work outdoors. The rules were designed to help keep workers safe from May through September 2022 as DOSH continued to develop permanent rules to address the serious hazards posed by extreme heat and exposure to wildfire smoke.

## Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site 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. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

* State Activity Mandated Measures (SAMM) Report
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* OITSS/WebIMIS
* SOAR
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

#### Status of Previous and New Findings and Observations

The State Plan made progress to address the previous five findings and eleven observations from the FY 2021 Comprehensive FAME Report. This follow-up FAME report contains five findings - four continued and one new, in addition to ten observations - nine continued and one new. DOSH completed one finding. Appendix A describes the continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2021 finding and recommendation in detail.

**Completed FY 2021 Finding**

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

**Status:** In 2010 OSHA resumed enforcement of conventional fall protection requirements for residential construction requiring State Plans to enforce “at least as effective” standards as OSHA’s at heights of six feet or higher. OSHA initially addressed ALAE concerns with DOSH fall protection rules with a letter in 2013, and later as an observation in the FY 2013 and FY 2014 FAME reports. The concern was first addressed as a Finding in the FY 2015 report, and the finding was continued through FY 2021. In 2016, DOSH started a rulemaking process to update fall protection requirements for construction. However, following stakeholder feedback, they shifted strategy to develop a unified fall protection standard in FY 2019. In FY 2021 OSHA found that some of the provisions of DOSH’s unified fall protection rule (Chapter 296-880 WAC Safety Standards for Fall Protection) were not at least as effective (ALAE) as OSHA general industry and construction standards. On September 22, 2022, DOSH responded to OSHA and agreed to amend Chapter 296-880 WAC to be as least as effective as OSHA’s standards. The final rule was adopted and went into effect on November 1, 2022. The DOSH rule addressed OSHA’s concerns about trigger heights for fall protection for employees engaged in roofing work on low pitched roofs, employees constructing a leading edge, and at ski area facilities and operations. This finding is completed. However, OSHA will continue to engage with DOSH through the plan change process to ensure that WAC rules related to the use of warning line systems for workers conducting roofing work on low pitched roofs are clear and at least as effective as OSHA standards.

**Continued FY 2022 Findings**

**Finding FY 2022-01 (FY 2021-01):** OSHA standards were not adopted by the adoption due date.

**Status:** In the FY 2021 FAME report, OSHA identified five standards that were overdue for adoption.. Currently, there are four standards that the State Plan is overdue in adopting: Rules for Crane Operator Certification Requirements, Standards Improvement Project - Phase IV, Beryllium Standard for General Industry, and Beryllium Standard for Construction and Shipyards. DOSH is actively working on adoption and has requested extensions. OSHA is not able to grant formal extensions for rulemaking but will continue to work with DOSH to complete adoption.  This remains a finding.

**Finding FY 2022-02 (FY 2021-03):** In FY 2021, 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.

**Status:** A case file review is needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**Finding FY 2022-03 (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.

**Status:** A case file review is necessary to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**Finding FY 2022-04 (FY 2021-05):** 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.

**Status:** A case file review is necessary to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open.

**New FY 2022 Finding**

**Finding FY 2022-05 (Observation FY 2021-OB-11):** 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.

**Status:** The State Plan revised the DOSH Consultation Manual on September 17, 2021, but did not include information about Form 16 for non-START program assistance. OSHA sent a letter requesting plan change updates to make the DOSH Consultation Manual “at least as effective” as the OSHA Consultation Policies and Procedures Manual (CSP 02-00-004) on June 15, 2022, and included concerns about the lack of explanation for Form 16 in the change request letter. DOSH provided a draft update on August 3, 2022, but has not issued updates to the manual to explain the use of Form 16. This was an observation for three years without action; therefore, it has been converted to a finding in FY 2022.

**Closed FY 2021 Observation**

**Observation FY 2021-OB-04:** 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.

**Status:** In FY 2022, DOSH conducted 3.30% (152 of 4,611) of inspections in state and local government workplaces (SAMM 6). While the percentage inspected is below the FRL of 4.75% to 5.25% (of total inspections), the overall inspection presence in Washington is higher than the national average (see SAMM 17). OSHA will work with DOSH to update the state and local government inspection goal during the FY 2024 23(g) grant application process. This observation is closed.

**Continued FY 2022 Observations**

**Observation FY 2022-OB-01 (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.

**Status:** A case file review is necessary to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.This observation is continued.

**Observation FY 2022-OB-02 (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).

**Status:** In FY 2022, DOSH did not ensure worker involvement in 394 of 4,611 (8.54%) of initial inspections (SAMM 13). DOSH and OSHA reviewed how data transfers between the Washington Information Network (WIN) and OIS and determined that performance on this measure was not related to system definitions or data transfer. DOSH updated the WIN system to require an explanation from the CSHO when the box in the WIN system is checked to indicate no employee involvement, and DOSH runs regular outlier reports to send to managers for review. This observation is continued and will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.

**Observation FY 2022-OB-03 (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.

**Status:** A case file review is necessary to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.This observation is continued.

**Observation FY 2022-OB-04 (FY 2021-OB-05):** In FY 2021, in 33% (39 of 120) of retaliation case files, accurate filing dates were not entered into WebIMIS.

**Status:** A case file review is necessary to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.This observation is continued.

**Observation FY 2022-OB-05 (FY 2021-OB-06):** In FY 2021, in 3% (two of 80) of administratively closed case files, complaints were improperly closed for untimeliness; however, both complaints were filed timely.

**Status:** A case file review is necessary to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.This observation is continued.

**Observation FY 2022-OB-06 (FY 2021-OB-07):**  In FY 2021, there was 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).

**Status:** A case file review is necessary to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.This observation is continued.

**Observation FY 2022-OB-07 (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: six did not include OSHA 300 logs where required, three did not include the written report to the employer, two were missing a list of hazards, and three consultation files where program assistance was requested were missing Form 16.

**Status:** A case file review is necessary to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.This observation is continued.

**Observation FY 2022-OB-08 (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 three consultation files where program assistance was requested were missing Form 16.

**Status:** A case file review is necessary to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.This observation is continued.

**Observation FY 2022-OB-09 (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.

**Status:** A case file review is necessary to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME.This observation will be continued.

**New FY 2022 Observation**

**FY 2022-OB-10:** In FY 2021, 21 of 31 (67.74%) work-place related fatalities were responded to in one workday (SAMM 10). The FRL is 100%.

**Federal Monitoring Plan:** OSHA will continue to discuss this metric during quarterly meetings, request information for outliers, and work with DOSH to ensure proper coding and data transfer from WIN to OIS.

**Discussion:** The FY 2022 end of year SAMM report indicated that ten fatalities were not responded to within one working day (SAMM 10). However, there was an eleventh fatality outlier that was received after the end of year SAMM data was run. Of the 11 fatality inspections opened beyond one working day, it was determined that three should not have been included on the SAMM report because DOSH determined that the fatalities were not work-related; one was miscoded as untimely because DOSH conducted the opening conference over the phone rather than in person; two were opened untimely due to reporting errors provided by the reporting entity; and four were not opened timely due to inclement weather, delays due to law enforcement inspection activities with first review, difficulties with locating the employer, or delayed determination of work-relatedness.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon FRL which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2022 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OITSS, a legacy data system, to the Whistleblower module in OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2022.

The State Plan was outside the FRL on the following SAMMs:

**SAMM 2a – Average number of workdays to initiate complaint investigations**

Discussion of State Plan data and FRL: The FRL for this measure is five days. The average amount of workdays for DOSH to initiate phone/fax investigations was 5.61 days. This average response time was slower than in FY 2021, when the average response time was 4.12 days.

Explanation: DOSH generally inspects all complaints that allege employee exposure to hazards that could cause serious injury or death and prioritizes these over complaint investigations. DOSH reported an increase of complaints for hazards that did not require inspections resulting in a response time slightly above the five-working day FRL to initiate complaint investigations.

**SAMM 3 – Percent of complaints and referrals responded to within one workday (imminent danger)**

Discussion of State Plan data and FRL: The FRL for this measure is 100%. DOSH reported two of 64 (3.22%) of cases where the response time was more than one workday for an imminent danger complaint.

Explanation: In both cases DOSH attempted to open the inspection the same day they received the complaint. In the first case, the inspector could not find the jobsite on the first day and opened the inspection three days later after receiving more information. In the second case, no employees were on site until six days later. The inspector opened the inspection that day.

**SAMM 4 – Number of denials where entry not obtained**

Discussion of State Plan data and FRL: The FRL for this measure zero. SAMM 4 indicates the State Plan did not obtain a warrant in one case during this period. This was a data entry error. The State eventually obtained entry.

Explanation: The inspector attempted to open an inspection and the employer denied them entry. The inspector was able to obtain entry at a later date.

**SAMM 7 - Planned v. actual inspections – safety/health**

Discussion of State Plan data and FRL: The FRL for safety and health inspections is +/- 5% of the negotiated 3,978 safety and 1,122 health inspections. The State Plan completed 3,637 safety inspections in FY 2021, 142 inspections below the FRL range of 3,779 to 4,176 inspections. Further, the State Plan completed 974 health inspections, which was 91 below the FRL range of 1,065 to 1,178.

Explanation: DOSH was outside the FRL on this metric due to the additional workload handling pandemic-related complaints and staff turnover. DOSH has hired several new compliance officers and expects that inspection numbers will continue to increase as new hires complete initial training.

**SAMM 8 - Average current serious penalty in private sector -total (1 to greater than 250 workers)**

Discussion of State Plan data and FRL: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 $1,913.16, which was $531.35 below the lower end of the FRL range of $2,444.51. The State Plan was below the FRL level for all employer sizes. DOSH’s penalties in relation to the FRL for each category is provided in Appendix D under SAMM 8.

Explanation: DOSH will work with the WISHA Advisory Committee to look at approaches to increase average penalties. Updates to the DOSH penalty structure must be done through the formal rulemaking process as the penalty structure is contained in statute rather than in Washington Administrative Codes.

**SAMM 9 - Percent in compliance**

Discussion of State Plan data and FRL: The further review level was based on a three-year national average +/- 20%. For safety inspections, the three-year national average was 32.25%, providing an FRL range of 25.80% to 38.70%. The State Plan safety in-compliance rate of 40.41%, was 1.71% above the upper range of the FRL. For health inspections, the three-year national average was 44.42% resulting in an FRL range between 35.54% and 53.30%. The State Plan health in-compliance rate of 29.50%, was 6.04% below the lower FRL range.

Explanation: In FY 2021, DOSH’s in-compliance rate for safety was 44.85%. DOSH’s in- compliance rate for safety had increased due to COVID-19 and a large number of new hires. The FY 2022 rate of 40.41% was an improvement and indicates that DOSH’s compliance staff are recognizing more hazards and DOSH is targeting high hazard industries. The State Plan’s in-compliance rate for health inspections was below the FRL range and was not a cause for concern.

### Appendix A – New and Continued Findings and Recommendations

FY 2022 WA DOSH Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 20XX-# or**  **FY 20XX-OB-#** |
| FY 2022-01 | In FY 2021, OSHA standards were not adopted by the adoption due date. | DOSH should ensure each standard is adopted by the due date. | FY 2021-01 |
| FY 2022-02 | 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 2021-03  FY 2020-03  FY 2019-03 |
| FY 2022-03 | 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. | 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 2021-04 |
| FY 2022-04 | 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. | 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 2021-05 |

| **FY 2022-#** | **Finding** | **Recommendation** | **FY 20XX-# or**  **FY 20XX-OB-#** |
| --- | --- | --- | --- |
| FY 2022-05 | 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. | DOSH should update the consultation manual to explain the use of Form 16. | FY 2021-OB-11  FY 2020-OB-04  FY 2019-OB-04 |

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### Appendix B – Observations Subject to Continued Monitoring

FY 2022 WA DOSH Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 2021-OB-# *or* FY 2021-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2022-OB-01 | 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. | Continued |
| FY 2022-OB-02 | 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*.* | Continued |
| FY 2022-OB-03 | 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 case file review in FY 2023. | Continued |
| FY 2022-OB-04 | 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. | Continued |
| FY 2022-OB-05 | 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 file review in 2023. | Continued |
| FY 2022-OB-06 | FY 2021-OB-07  FY 2020-OB-03  FY 2019-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 related to reporting of workplace injuries and illnesses are investigated under the 23(g) grant. | Continued |
| FY 2022-OB-07 | 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: six did not include OSHA 300 logs where required, three did not include the written report to the employer, two were missing a list of hazards, and three 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 2023. | Continued |
| FY 2022-OB-08 | FY 2021-OB-09 | In FY 2021, 12 of 57 (21%) of private sector consultation files were missing one or more  types of documentation: nine did not include OSHA 300 logs where required, and three 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 2023. | Continued |
| FY 2022-OB-09 | 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 2023. | Continued |
| FY 2022-OB-10 |  | In FY 2022, 21 of 31 (67.74%) work-place related fatalities were responded to in one workday (SAMM 10). The FRL is 100%. | OSHA will continue to discuss this metric during quarterly meetings, request information for outliers, and work with DOSH to ensure proper coding and data transfer from WIN to OIS. | New |

### Appendix C - Status of FY 2021 Findings and Recommendations

FY 2022 WA DOSH Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| FY 2021-01 | OSHA standards were not adopted by the adoption due date. | DOSH should ensure each standard is adopted by the due date. | DOSH will continue to make every effort to adopt OSHA standards by the due date. DOSH must follow the Administrative Procedures Act, RCW 34.05, which mandates rulemaking timelines that are longer than the six-month adoption period normally allowed by OSHA. | Not Completed | Open  (2/28/2023) |
| 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. | DOSH updated its protection rule to be ALEA OSHA. The updated rule went into effect on 11/01/2022. | Completed | Closed  (11/1/2022) |
| 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. | The complainants are given an opportunity to resolve/rebut any discrepancies with the Respondent’s defense. This is addressed and listed in the final report of investigation.  This will be more clearly marked and defined in the final reports of investigation in the future. | Not Completed | Awaiting Verification  (8/23/2022) |
| 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. | DOSH is currently updating our Consultation Manual and will provide training on this issue in the beginning of 2023. In the interim DOSH has asked staff to follow OSHA’s recommendations, with supervisors and managers monitoring weekly progress. | Not Completed | Open  (8/23/2022) |
| 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. | DOSH is currently updating our Consultation Manual and will provide training on this issue in the beginning of 2023. In the interim DOSH has asked staff to follow OSHA’s recommendations, with supervisors and managers monitoring weekly progress. | Not Completed | Open  (8/23/2022) |

### Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report

FY 2022 WA DOSH Follow-up 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) | 6.85 | 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) | 6.85 | 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) | 5.61 | 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) | 5.61 | 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) | 96.88% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 1 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.52 | +/- 20% of  1.77 | 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 2.12 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 1.80 | +/- 20% of  0.90 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 3.30% | +/- 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 4.75% to 5.25%. |
| 7a | Planned v. actual inspections (safety) | 3,637 | +/- 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) | 974 | +/- 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) | $1,913.16 | +/- 25% of  $3,259.35 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. |
|  | **a**. Average current serious penalty in private sector (1-25 workers) | $1,313.00 | +/- 25% of  $2,145.46 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,609.10 to $2,681.83. |
|  | **b**. Average current serious penalty in private sector (26-100 workers**)** | $2,189.99 | +/- 25% of  $3,818.56 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. |
|  | **c**. Average current serious penalty in private sector (101-250 workers) | $2,336.17 | +/- 25% of  $5,469.60 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. |
|  | **d**. Average current serious penalty in private sector (greater than 250 workers) | $3,943.94 | +/- 25% of  $6,725.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. |
| 9a | Percent in compliance (safety) | 40.41% | +/- 20% of  32.25% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety. |
| 9b | Percent in compliance (health) | 29.50% | +/- 20% of  44.42% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 67.74% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 40.38 | +/- 20% of  54.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety. |
| 11b | Average lapse time (health) | 57.47 | +/- 20% of  69.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health. |
| 12 | Percent penalty retained | 100% | +/- 15% of  69.97% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 59.47% to 80.47%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 91.46% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 17 | Percent of enforcement presence | 3.0% | +/- 25% of  1.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D are pulled from the State Activity Mandated Measures (SAMM) Report in OIS run on November 14, 2022, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.