**FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

**Washington Department of Labor and Industries**

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



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# Executive Summary

The purpose of this report is to assess the Washington State Plan’s performance for Fiscal Year (FY) 2023, 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 have a relatively low number of worker fatalities. Washington had a workplace fatality rate that was 0.8% below the national average for 100,000 in 2022 and has been below the national average for more 25 years. For Construction workers the workplace fatality rate was 4.0% below the national average for 100,000 workers in 2022.

The State Plan took initiative on the rulemaking front by issuing updated heat protection standards in July 2023, which included requirements that workers have access to shade and water during periods of high temperatures. DOSH issued a proposed rule on safety protections for workers exposed to wildfire smoke during the evaluation period. A final rule went into effect in January of 2024. Both issues were national issues during 2023 and, as noted in previous FAME reports, DOSH often leads the nation in initiating rulemaking related to dangerous hazards.

All public and private consultation is provided under 100% state funding. The consultation program provided effective services to employers in Washington. During FY 2023 DOSH conducted 1,929 consultation visits. The State Plan focused its efforts on the agriculture, logging, construction, and healthcare industries.

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 2023. DOSH is implementing a WISHA 10 for Agriculture Workers Certification in high schools near Reardan, WA, which is a 10-hour workplace safety and health training for the agriculture industry. DOSH is also implementing WISHA 10 training classes in high schools taught by high school faculty.

OSHA identified one finding and ten observations during this evaluation period. No findings were new, one was continued. Four findings from FY 2022 and three observations from FY 2022 were completed. Three observations were new and seven observations from FY 2022 were continued. Appendix A describes new and continued findings, and recommendations. Appendix B describes observations subject to continued monitoring, the related federal monitoring plan, and completed observations. Appendix C describes the status of previous findings with associated completed corrective actions.

# II. State Plan Background

## Background

The State of Washington, under an agreement with OSHA, operates an occupational safety and health program through its Department of Labor and Industries (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 the 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 their 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.

For FY 2023, the initial base award to fund the program was $7,844,300 in federal funds. The federal base award was increased by $500,700 in June 2023. One-time only awards in the fourth quarter increased the federal share of the grant by $325,000. The state matched the federal funds and provided an additional $49,371,545 for a total grant allocation of $66,711,545. The state reported final expenditures to be $63,182,281 ($8,670,000 federal, $8,670,000 state match, and $45,842,281 in 100% state funds – direct costs). The grant supported a total of 446.3 positions that included 154 enforcement compliance positions (102 safety and 52 health), as well as 49 consultant positions (31 safety and 18 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.

## New Issues

There were no new issues identified in FY 23.

# III. Assessment of State Plan Progress and Performance

## Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA conducted an on-site evaluation and case file review. An eleven-person OSHA team, divided into enforcement, consultation, and whistleblower protection sub-teams, conducted a full on-site case file review. The case file review was conducted at the Washington State Plan office from November 27 to November 30, 2023. The team reviewed 328 safety and health inspection, consultation, and whistleblower protection case files. Case files were randomly selected from inspections, whistleblower protection investigations, and consultation visits conducted during the evaluation period (October 1, 2022, through September 30, 2023). The selected population included:

Enforcement inspection case files (130):

* Twenty-nine (29) fatality case files- 27 fatalities and two catastrophes
* Thirty-four (34) programmed planned
* Four (4) programmed related
* Nineteen (19) complaint
* Thirty-three (33) referral
* Eight (8) unprogrammed related
* Eight (8) follow-up

Whistleblower inspection case files:

Section 49.17.160 of the Revised Code of Washington provides for whistleblower protection equivalent to that provided by OSHA. A total of 103 retaliation investigations were completed and 303 complaints were administratively closed in FY 2023. A random selection of completed and administratively closed investigation files were chosen for review according to the percentage each category made up of the total. This resulted in 130 case files which consisted of:

* Eighty-eight (88) Administratively Closed
* Twenty-eight (28) dismissed
* Two (2) Settled Other
* Five (5) Settled
* Seven (7) Withdrawn

Consultation files (68):

* Forty- six (46) private sector
* Twenty- two (22) state and local government 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 11/24/2023)
* State Information Report (SIR, dated 11/24/2023)
* Mandated Activities Report for Consultation (MARC, dated 11/16/2023)
* State OSHA Annual Report (SOAR, December 2023)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Fullcase file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2023 State Activity Mandated Measures Report and includes the FRL for each measure.

## Review of State Plan Performance

### 1. **Program Administration**

1. The DOSH Training Group conducted two eight-week new hire training sessions. They continued to use a hybrid model that was implemented first during the COVID-19 pandemic. DOSH moved into their new laboratory and training facility, which includes demonstration rooms suited for mock inspections. DOSH hosted its annual Technical Symposium, initiated a “DOSH Town Hall”, which are periodic presentations on rule changes and agency updates, and “Tech Talks”, which are focused virtual lessons on technical topics. The Symposium had 165 staff members hired since the start of the pandemic who were first time attendees. The new facility has space for outdoor demonstrations, which included building supported scaffolds with a mobile crane.
2. OSHA Information System – 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. However, DOSH continued to use paper files as the case file of record. For the whistleblower protection program, the State Plan utilized OSHA’s WebIMIS, but plans to transition to WIN or OIS soon.

OSHA identified areas where the transition of data from WIN to OIS does not produce useful SAMM data. For example, SAMM 12 Percent Penalty Retained, always shows as 100% due to differences in the post-issuance processes between OSHA and DOSH. When OSHA identified discrepancies, as in this example, DOSH compiled the necessary data and provided it to Region 10. DOSH chose not to use the new online complaint transfer system in OIS. The OSHA Washington Area Office continues to screen and send complaints under DOSH’s jurisdiction to DOSH by email.

1. State Internal Evaluation Program Report – In the year ending September 30, 2023, DOSH Internal Evaluation completed four audits, two consultations, and started two new audits (Consultation case files and Asbestos certification). They tracked progress toward meeting 50 audit recommendations, noting completion of 24. They completed a self-assessment of their program to assure quality and integrity, using resources from The Institute of Internal Auditors in 2021, which is due again in 2-3 years. Finally, they consulted with DOSH senior managers to create their FY24 risk-based audit plan.
2. Staffing – As of July 1, 2023, the on-board staffing was at 87.5% for authorized compliance positions and 90% for authorized consultation positions. Of the 102 authorized safety compliance positions, 88 were filled. Of the 50 authorized health compliance positions, 45 were filled. In consultation, of the 31 authorized safety positions, 29 were filled. Of the 19 authorized health consultation positions, 16 were filled (FY 2024 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 that 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:

* DOSH responded to 97.44% (76 of 78) of imminent danger complaints and referrals within one working day (SAMM 3). This is an improvement compared to the last comprehensive FAME data, when the percentage was 93.44%.
* The average amount of workdays for DOSH to initiate complaint inspections was 7.02 days (SAMM 1a). This is an improvement compared to the last comprehensive FAME data, when the average was 8.83 days.
* The average amount of workdays for DOSH to initiate phone/fax investigations was 5.93 days (SAMM 2a). This was slower compared to the last comprehensive FAME data, which was 4.12 days.

Imminent danger – For both outliers DOSH attempted to open the inspection within one day but there were no workers on site. For one outlier DOSH opened the inspection when workers returned to the site. For the other, after multiple attempts to open onsite, DOSH went to the employer’s office to open the inspection.

There were no issues with gaining entry during the FY2023 timeframe.

Fatalities/Catastrophes – OSHA requested to review 26 specific fatality case files, but clarified with DOSH that the intent was to review all fatality case files from FY23. DOSH provided 29 case files that were coded as FAT/CATs. Ten of the case files were open and OSHA reviewed them but did not use them for purposes of this report. Three of the remaining case files were coded a catastrophe when they appear to have been a single employee hospitalization. Five of the remaining case files were employers on multi-employer sites and were not the employer of the deceased. Of the remaining 11 case files, one fatality was not work related and three others were likely not work related.

In 4 of 7 (57%) 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 continue to track this observation from FY 2022.

**Observation FY 2023-OB-01 (FY 2022-OB-01):** In FY 2023, in 4 of 7 (57%) 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. OSHA will request updates at quarterly meetings.

None of the reviewed fatality case files were “no inspection” or “no jurisdiction”. Of the 30 work related fatalities reported in SAMM 10, DOSH responded to 26 (86.67%) within one workday. From the case file review: Of the 16 closed fatality files reviewed, five 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. DOSH explained all outliers during quarterly meetings. Causes of late responses included but are not limited to no employer or employees on site, a delay due the fatality occurring on tribal land (time spent working with the tribe and OSHA to determine jurisdiction, DOSH and OSHA were on site within one day but DOSH did not open it until jurisdiction was determined), and a media referral where a shooting victim was not known to be an employee (once confirmed as an employee DOSH opened the inspection). Others involved determining whether the fatality was work related before opening the inspection.

**Observation FY 2023-OB-02 (FY 2022-OB-010):** In FY 2023, 26 out of 30 (86.67%) 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. There continues to be some discrepancies between the SAMM and the case file review. However, in most cases DOSH at least attempted to open an inspection within one day of notification of a fatality.

Washington’s overall fatality rate in 2022 was 2.9 fatalities per 100,000 workers, which was lower than the national rate of 3.7 fatalities per 100,000 workers. The rates in Washington by sector were as follows: Agriculture, forestry, fishing, and hunting – 8.8; Construction – 9.0; Manufacturing – 1.3; Wholesale and retail trade – 1.6; Transportation and Utilities – 6.8; Professional and business services – 2.3; and Other services, except public administration – 6.2 (BLS December 19, 2023).

Targeting and Programmed Inspections – 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 2023 was 3.29%. This was more than double the high end of the FRL range of +/- 25% of the three- year national average of .70% to 1.17%. DOSH engages in enforcement activity with employers at a rate that exceeds the three-year national average.

The percent of programmed inspections for the private sector was 39.13% for safety and 7.52% for health (SIR 1a). DOSH continued to direct the majority of its resources towards responding to unprogrammed complaints and referrals.

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

The FY 2023 annual performance plan goal was to conduct 5,100 enforcement inspections (SAMM 7). The number of safety inspections conducted was 4,131 (100%) of the goal and within the FRL range of 3,924.45 – 4,337.55. The number of health inspections was 1,173 (121%) of the goal and above the FRL range of 920.55 - 1,017.45. The total of 5,304 inspections was 104% of the goal.

DOSH Goal Related to Targeting and Emphasis Programs from the 2023 23(g) Grant Application and the 2023 SOAR:

* DOSH resources are focused on these high hazard industries: agriculture, construction, logging, and healthcare.
* Maintain a fatality rate for work-related injuries that is 30% below the national average. For 2021, most recent data available, Washington ranked 4th lowest in the nation with a 2021 fatality rate of 2.1 per 100,000 full-time equivalent workers. In comparison, the national average was 3.6 overall. Washington State’s overall fatality rate was 42% lower than the national average. The fatality rate for construction was 6.7 in FY2021, lower than the national rate of 9.4.
* DOSH significantly reduced the number of in-compliance safety and health inspections from FY 2021 (50.2% safety and 35.6% health) to FY 2023 (30% safety and 29% health).
* DOSH is implementing the WISHA 10 for Agriculture Workers Certification in schools in the eastern part of the state near Reardan, WA.
* Conduct at least 65 logging safety or inspections/consultations. Conducted 113 inspections and 67 consultations.
* DOSH is working on completing an infectious disease rule specific to healthcare.
* DOSH described significant cases in the 2023 SOAR.

In-compliance inspections - The FRL for percent in-compliance for safety inspections was +/- 20% of the one-year national average of 31.73%, which equaled a range of 25.38% to 38.07%. The Washington State Plan’s percent in-compliance for safety was 31.08%, which was within the FRL and below the national average. The FRL for percent in-compliance for health inspections was +/- 20% of the one-year national average of 43.82%, which equaled a range of 35.06% to 52.58%. The Washington State Plan’s percent in-compliance for health was 30.10%, which is far below the FRL (SAMM 9). Relative to FY2021, in-compliance health inspections had a slight reduction from 31.65%. In-compliance safety inspections dropped from 44.85%, a substantial reduction that brings the measure within the FRL range.

DOSH issued citations in a timely manner with an average safety lapse time of 39.79 days, which was better than the FRL range of 44.18 to 66.28. The average health lapse time of 52.31 days was within the FRL range of 55.78 to 83.67 (SAMM 11). DOSH continues to have a substantially faster lapse time than the national average.

Citations and Penalties - The OSHA case file review found that DOSH provided adequate evidence to support violations.

DOSH cited 5,485 serious, willful, repeat, and/or unclassified (SWRU) violations and 6,522 other-than-serious (OTS) violations for 3,478 inspections. The average number of SWRU violations cited per inspection (SAMM 5a) was 1.57 and was within the FRL range of 1.4 to 2.1. The average number of OTS violations cited per inspection (SAMM 5b) was 1.88, which was above the FRL range of 0.71 to 1.07. 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 and failure to have safety meetings, which are classified as OTS.

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 $1,953.20.27, which was $765.71 below the lower end of the FRL range of $2,718.91 to $4,531.51 (SAMM 8). The State Plan was below the FRL level for all employer sizes. However, the penalties for all employer sizes were higher than in FY21.

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. DOSH is working with the WISHA Advisory Committee regarding penalties. Updates to the DOSH penalty structure must be done through the formal rulemaking process as the penalty structure is contained in Washington Administrative Codes rather than policy.

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 2023** | **Three-Year National Average** | **FRL (Plus or Minus 25% of the three-year national average)** |
| --- | --- | --- | --- |
| **1-250+** | $1,953.20 | $3,625.21 | $2,718.91 to $4,531.51 |
| **1-25** | $1,343.00 | $2,348.03 | $1,731.02 to $2,935.04 |
| **26-100** | $2,201.70 | $4,167.28 | $3,125.46 to $5,209.10 |
| **101-250** | $3,493.80 | $6,052.04 | $4,539.03 to $7,565.05 |
| **250+** | $3,544.96 | $7,331.41 | $5,498.56 to $9,164.26 |

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 with inspections that had abatement stated that abatement was complete. However, for inspections of construction sites, the case file review revealed that DOSH does not always require abatement because the conditions no longer exist and usually attempts to conduct a follow-up inspection at another site operated by the employer.

The DOSH annual performance goal of having 95% of serious violations verified abated within 14 days of the abatement date was not met. For FY 2023, 88.7% (3,693 of 4,163) of serious violations were abated and verified within 14 days of the abatement dates. The percent verified is rising and is expected to continue to rise over the next few months.

Worker and Union Involvement - The DOSH Compliance Manual requires that employees can participate through interviews and by an employee representative accompanying the CSHO during the inspection. Employees must be given 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 92.79% of initial inspections did an employee 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 at least 12 cases, worker interviews were not documented. 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 only slightly improved compared to FY 2021 (91.19%), OSHA will continue this observation in FY 2023.

**Observation FY 2023-OB-03 (FY 2022-OB-02)**: In FY 2023, in 394 of 5,304 (7.43%) 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.

Twelve case files indicated a union site. Of those, documentation indicated that three participated in the opening conference, four participated in the walk around, and three participated in the closing conference. In 8 of 12 (66.7%) 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. OSHA will continue this observation in FY 2023.

**Observation FY 2023-OB-04 (FY 2022-OB-03)**: In FY 2023, in 8 of 12 (66.7%) inspection case files where union workers were on the job site, the union did not participate in the inspection and there was not an explanation in the case file regarding the lack of participation.

**Federal Monitoring Plan:** OSHA will discuss this concern with DOSH during quarterly meetings.

### 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 12 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 15% of the three-year national average, which was 61.06% to 82.62 in FY 2023. 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 62.5% of penalties in FY2023, which was within the FRL range.

Penalty collection information is not kept in the DOSH case files. During the case file review, DOSH provided OSHA with penalty information on the requested case files. Of the 33 programmed inspection case files reviewed, 12 had penalties. Of those 12, ten were paid in full and two were unpaid. Of the 67 unprogrammed, non-fatality, inspection case files reviewed, 26 had penalties. Of those 26, 22 were paid in full, one was on a payment plan, and three were unpaid. Of the 25 fatality inspection case files reviewed, 13 had penalties. Of those 13, nine were paid in full and four were under appeal.

### 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 six standards that required a state intent response in FY 2022 and FY 2023 and DOSH was timely with providing its intent for all six. All standards that were not related to COVID were adopted timely. The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn and has since expired. Two standards from 2019 have not yet been adopted, the Crane Operator Certification Requirements, and Standards Improvement Project Phase IV.

**Finding FY 2023-01 (FY 2022-01 and FY 2021-01):** In FY 2023, standards were not adopted by their due date.

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

OSHA issued Federal Program Changes (FPCs) where adoption was required in FY 2022 and FY 2023 and DOSH provided a timely response and adopted six of eight. OSHA issued six FPCs where equivalency was required in FY 2022 and FY 2023 and DOSH was timely with its intent for all six. OSHA issued two FPCs in FY 2022 and FY 2023 where adoption was encouraged, and DOSH provided a timely response for both and adopted one. DOSH is conducting warehousing inspections while they work on their Warehousing NEP.

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

(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** |
| --- | --- | --- | --- | --- | --- | --- |
| 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. |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | 11/15/2021 | Yes | No | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | 12/28/2021 | Yes | No | 1/24/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 1/24/2022 | Yes | No | 7/15/2022 | 1/21/2019 |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 3/14/2022 | Yes | No | 8/14/2022 | N/A[[1]](#footnote-2) |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 1/24/2023 | Yes | Yes | 7/15/2023 | 1/21/2019 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 3/29/2023 | Yes | Yes | 1/21/2024 | 8/29/2023 |

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Required**

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 3/23/2023 | Yes | No | 7/30/2023 | 9/27/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | Date not in SPA | Yes | No | 1/9/2024 | Not adopted yet. Anticipated date of July 2024. |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Equivalency Was Required**

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 6/27/2022 | Yes | No | 11/3/2022 | 3/25/2013 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/10/2022 | Yes | No | 2/11/2023 | 3/15/2022 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/2/2022 | Yes | No | 3/15/2023 | 5/22/2022 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 3/23/2023 | Yes | No | 8/6/2023 | 4/1/2019 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/26/2023 | Yes | No | 10/28/2023 | 10/28/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 11/1/2023 | Yes | No | 3/27/2024 | Not due yet at time of draft (3/26/2024) |

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged**

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 2/8/2022 | No | No | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 5/26/2022 | Yes | No | 6/2/2023 |

**Table E**

**FY 2022 and FY 2023 State-Initiated Changes**

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| Rescinding DD 30.20, Scaffolds and Fall Protection Work Plan | NA | 3/9/2022 |
| Update DOSH Compliance Manual | 3/15/2022 | 3/15/2022 |
| DOSH Directive 23.90 Respiratory Protection for Class 1 Asbestos Work | 4/26/2022 | 7/6/2022 |
| DOSH Directive 1.60 Expiring Training Certification during the COVID-19 Outbreak | 5/9/2022 | 5/9/2022 |
| Chapter 296-62, Outdoor Heat Exposure General Occupational Health Standards and Chapter 296-307, Safety Standards for Agriculture - Emergency Rules | 6/1/2022 | 6/1/2022 |
| WA-OSHA Federal-Initiated Plan Change (SPC 22-07) for Amendments to Fall Protection Rule | 9/20/2022 | 11/1/2022 |
| Rescinding DD 1.70, General Coronavirus Prevention Under Stay Safe - Stay Healthy Order | 7/15/2022 | 7/15/2022 |
| Chapter 296-307 WAC, Safety Standards for Agriculture, Part I, Worker Protection Standard | 8/23/2022 | 8/23/2022 |
| Updated DOSH Appeals Manual and Recission of DOSH Administrative Manual | 12/1/2022 | 12/1/2022 |
| Rescinding DD 11.80 (Fit-Testing/Respiratory/Face Coverings) | 12/29/2022 | 12/29/2022 |
| Amending Chapter 296-304 WAC | 11/22/2022 | 11/22/2022 |
| Updates to the DOSH Internal Evaluation Manual | 10/1/2022 | 10/1/2022 |
| Boat Hoists | 4/6/2023 | 4/6/2023 |
| DOSH Directive 8.70, Crane Safety Inter-Program Coordination | 6/5/2023 | 6/5/2023 |
| DOSH Directive 10.20, Heat Exposure National Emphasis Program | 6/2/2023 | 6/2/2023 |
| Amending WAC 296-115 Safety requirements for charter boats- Hana due 9.21.23 | 4/18/2023 | 4/18/2023 |
| DOSH Directive (DD) 10.15, Outdoor Heat Exposure Procedures | 7/17/2023 | 7/17/2023 |
| DOSH Directive (DD) 12.85, Enforcement and Consultation Guide for Combustible Dust Hazards | 9/27/2023 | 1/30/2023 |
| DOSH Directive (DD) 11.90, Modified Ambient Aerosol CNC Fit Testing Protocols | 9/14/2023 | 9/14/2023 |
| Amending WAC 296-307 Part L, Temporary Worker Housing | 9/19/2023 | 11/1/2023 |
| Updating the DOSH Consultation Manual | 8/1/2023 | 8/1/2023 |
| DOSH Directive (DD) 1.41, Private Detention Facilities | 11/14/2023 | 11/14/2023 |

### 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 23 variances requested in FY 2022-2023, eight permanent variances were granted, five variance requests were denied, 4 were withdrawn and 6 are still under investigation.

### 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 2023, 2.39% of inspections were conducted in state and local government workplaces, which was below the FRL range of 4.75% to 5.25% (SAMM 6). DOSH does not 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. 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 2025 23(g) grant application process.

### 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 2023, 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 (WIM) policies and

procedures as outlined in the State Plan’s DIM and were generally followed. The state has issued a new DIM, and it is currently under review by OSHA.

During the case file review evidence that complainants were contacted to resolve discrepancies or rebut the Respondent’s defense were noted. This resolves finding **FY 2022-02** and it is completed. Additionally, no complaints were closed as untimely so observation **FY 2022-OB-05** is completed, and it appears that complaints regarding workplace injuries are being screened for possible investigation so observation **FY 2022-OB-06** is completed.

During the retaliation case file review, OSHA noted that filing dates were not accurately entered into WebIMIS. In 21 of 130 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 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. While significant improvement had occurred over the last two FAMEs, this will still be an observation for FY 2023.

**Observation FY 2023-OB-05 (FY 2022-OB-04)**: In FY 2023, 16% (21 of 130) of retaliation case files, accurate filing dates were not entered into WebIMIS.

**Federal Monitoring Plan FY 2023-OB-05:** During quarterly meetings, OSHA will monitor that correct filing dates are entered into WebIMIS.

Proper documentation in retaliation case files is important to ensure the totality of the case is recorded and understood by all parties conducting any type of review after the case has been completed. In the case files reviewed for proper documentation, specifically official letters, while in the file, there was no proof of delivery of these official letters.

**New Observation FY 2023-OB-06:** In FY 2023**,** 79% (103 of 130) retaliation case files lacked the required documentation, specifically proof of delivery of official letters.

**Federal Monitoring Plan FY 2023-OB-06**: OSHA will monitor the lack of required documentation during quarterly meetings with DOSH.

Through the on-site case file review, it was noted that gaining agreement from the complainant for an administrative closure was not occurring in 63 of the 88 administrative closured cases reviewed. While the current DIM does not require this, a new Federal WIM has been issued and requires the state plan states to initiate a change of their DIM. The new DIM is currently under review and should contain language about gaining complainants agreement for administrative closures of a filed complaint.

**New Observation FY 2023-OB-07:** In FY 2023, agreement for the complainant to

administratively close the case was not obtained in 71% (63 of 88) of the retaliation case files reviewed.

**Federal Monitoring Plan**: OSHA will monitor that DOSH discrimination investigators are obtaining agreement for complainants to administratively close cases during the quarterly

meeting with DOSH.

### 8. Complaint About State Program Administration (CASPA)

There were no CASPAs in FY 2023 or FY 2022.

### 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 2023, there were 19 approved VPP sites in DOSH’s jurisdiction.

### 10. State and Local Government 23(g) Onsite 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 106 total consultation visits were conducted in state and local government agencies, with 104 initial visits. Seventy-two consultation visits or (69%) were conducted in high hazard industries (MARC 1). A total of 100 (96%) visits were in smaller businesses with fewer than 250 employees (MARC 2A) and 80 visits (96%) were conducted in establishments with fewer than 500 employees (MARC 2B). The consultant conferred with employees in 102 (98%) Initial Visits and 2 (100%) Follow-Up Visits (MARC 3A-3B).

During this evaluation period, 166 serious hazards were identified and 99% of serious hazards were corrected in a timely manner. A total of 25 serious hazards were corrected on-site, 135 within the original time, and 5 within 14 days of the latest correction date. Of these, 96% were corrected within the original timeframe or on-site, exceeding the goal of 65%. No employers were referred to enforcement (MARC 4A-4D).

OSHA reviewed 22 state and local government workplace consultation files. In FY23, it was noted that serious hazards were corrected timely and hazard verification documentation was provided, thus **Finding FY 2022-03** is completed. **Observation FY 2022-OB-07**, which was related to documentation improved, written reports to the employer, list of hazards, and Form 16 documentation were sufficient. However, OSHA 300 logs were still missing.

File review revealed missing OSHA 300 logs in the files, resulting in one observation.

**Observation FY 2023-OB-08 (FY 2022-OB-07):** In FY 2023, eight out of eleven (72%) state and local government workplace consultation files with 10 or more employees at the worksite, did not have the OSHA 300 logs in the file.

**Federal Monitoring Plan:** OSHA will discuss with DOSH during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a file review during the next comprehensive FAME.

### 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 1,807 consultation visits were conducted in private sector establishments, 1,749 visits were initial visits. Of these, 1,511 (86%) consultation visits were conducted in high hazard industries (MARC 1). A total of 1,719 (98%) were in businesses with fewer than 250 employees (MARC 2A) and 1,678 visits (95%) were conducted in establishments with fewer than 500 employees (MARC 2B). In all consultation visits, the consultant conferred with employees 98% of the time (MARC 3).

During this evaluation period, 3,598 serious hazards were identified and 98% of serious hazards were corrected in a timely manner. A total of 1,361 serious hazards were corrected on-site, 2,063 within the original time, and 121 within 14 days of the latest correction date. Of these, 95% 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 27-December 1, 2023, 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.

The employees and managers of the WA DOSH Consultation Program are fulfilling the requirements and expectations found in the operational elements. A discussion of the elements is provided below.

**Training Received by Consultants**

Consultants develop an annual performance and training plan that outlines both required and requested training for the year. New hires spend 3-4 days studying the consultation manual and learn about health and safety management systems. WA DOSH has their own internal training program for safety and health classes, occasionally they invite the OSHA OTI instructors to teach a class and have specialized classes. One Industrial Hygienist per region completed Process Safety Management training. Annual accompanied visits are conducted for each employee with suggestions on how to improve and best practices noted. Consultants also attend many conferences. WA DOSH has a healthy training budget and provides both classroom and online training classes.

**On-the-Job Evaluations**

On-the-Job Evaluations (OJEs) or accompanied visits, are conducted by the consultant’s supervisor at least once a year. Information collected during the evaluation becomes part of the consultant’s annual performance planning and appraisal form (PPAF) review and is provided to the consultation program manager.

**Lapse Time from Request to Delivery of Service**

The Consultation Program prioritizes requests per the CPPM. The average lapse time from request to visit was 26 days for fiscal year 2023. The program is efficiently managing response timeliness.

**Management Reports**

Consultation WIN and OIS data reports including but not limited to written reports pending, pending hazard corrections, number of employer requests, and consultation visits pending, are run on an ongoing basis by each office supervisor and are discussed with the consultants in their respective offices. Hazard abatement reports are run weekly to ensure serious hazards are correctly timely by the employer.

**Hiring and Vacancies**

The consultation program was fully staffed until November of 2023, when one supervisor left. Two specialty ergonomic consultants were hired in FY 2023.

**Program’s Budget**

The program’s finances are audited by the Office of Administrative Programs in the OSHA Region 10 Office every two years. This program is mainly state funded through the Washington Department of Labor and Industries.

**Recent Consultation Program Developments**

The following are recent developments designed to improve the consultation program and its services to employers.

* The employer survey is being revamped to ensure that consultation services can be as effective as possible for the employer. Currently managers are calling 4-5 employers a month to get feedback in addition to the current online survey.
* Consultants are helping with a DOSH wide program to help employers develop their Accident Prevention Plan.
* Two specialty ergonomics consultants were recently hired to conduct specialized ergonomics assessments.
* DOSH is conducting their own internal audits to ensure internal quality assurance on employer reports and making programmatic recommendations for improvement.

**Verification of the Monitoring of Consultants’ Performance**

Consultants’ performance is monitored by internal and external measures that include:

* Review of the written report to the employer by supervisors.
* Annual accompanied visits by supervisors.
* Evaluation of WA Labor and Industries employer’s insurance premium data and injury rates before and after consultation services.
* Employer surveys.

**Promotion of the Program’s Recognition and Exemption Program**

The program’s START program is equivalent to the federal SHARP program. There are currently 21 participants and graduates. The program is marketed by consultants during their on-site consultation visits. The risk management group is largely responsible for promoting the program through their employer visits. The program also promotes START through the various safety and health conferences held throughout the state, such as the Washington Governors’ Conference. The Consultation Program Manager expects each Region to recruit two new START sites every year, ten new ones per year for the entire state. They currently have 12 prospective interests. A construction company in Vancouver has eight sites. Their goal is 100 sites in Washington state.

**Marketing Initiatives**

Information regarding the program’s services is provided at the annual Governor’s Safety and Health Conference, and through multiple other avenues, including but not limited to:

* Regular and reoccurring workshops and conferences.
* Speaking/presenting safety and health related information at association meetings.
* Brochures and other safety and health related publications.
* Referrals from State Risk Managers and the Industrial Insurance Fund.
* Participation in statewide safety stand downs.
* Develop consultation marketing videos, radio spots, and commercials.
* Extensive social media campaigns- Facebook, Linked In, You Tube, Twitter/ X.

**The Program’s Internal Quality Assurance Programs**

Consultant training, reviewing reports and accompanied visits are all part of internal quality assurance. DOSH internally audits the consultation program as well for internal quality assurance. All the elements and requirements found in Appendix K Consultant Function – Competency Statements and Consultant Qualifications of the CPPM are incorporated in the DOSH Consultation Manual, training program and performance measures.

**The Selection and Use of PPE**

The program selects and provides PPE based on the observed hazards encountered by consultants during on-site visits. All employees are included in a hearing conservation program. Industrial hygienists are included in a respiratory protection program even through respirators are rarely needed. Employees have suitable PPE.

**Visit File Review**

A total of 46 private sector case files were reviewed, which included START participants. In FY 23, hazard verification was sufficient, thus **Observation FY 2022-OB-09** is completed. **Observation FY 2022-OB-08** was related to documentation in case files. Form 16 documentation was sufficient, thus that part is completed. However, missing OSHA 300 logs were still an issue. Form 16 is described in the DOSH consultation manual; thus **Finding FY 2022-05** is completed**. Finding FY 2022-04** is completed while we review the updated DOSH manual, and timeliness of the report to the employer requirements. In FY 2023, reports were sent to the employer an average of 12 calendar days from the closing conference, and 8 working days from the closing conference, which is well below the DOSH Consultation Manual’s requirement of 15 calendar days.

There was one continued observation, and one new observation regarding OSHA 300 logs and DART rate comparisons.

**Observation FY 2023-OB-09 (FY 2022-OB-08):** In FY 2023, in 10 out of 22 (45%) private sector consultation files with 10 or more employees at the worksite, the OSHA 300 logs were not in the file**.**

**Federal Monitoring Plan:** OSHA will discuss with DOSH during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a file review during the next comprehensive FAME.

**Observation FY 2023-OB-10:** In FY 2023, in six out of 22 (27%) private sector consultation files with 10 or more employees at the worksite, there was no comparison of the employer DART rate to the national average.

**Federal Monitoring Plan:** OSHA will discuss with DOSH during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a file review during the next comprehensive FAME.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | In FY 2023, standards were not adopted by their due date. | DOSH should ensure each standard is adopted by the due date. | FY 2021-01  FY 2022-01 |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | FY 2022-OB-01 | In FY 2023, in 4 of 7 (57%) case files where next of kin letters were appropriate, the letters were not included 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 2023-OB-02 | FY 2022-OB-10 | In FY 2023, 26 out of 30 (86.67%) 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. There continues to be some discrepancies between the SAMM and the case file review. However, in most cases DOSH at least attempted to open an inspection within one day of notification of a fatality. | Continued |
| FY 2023-OB-03 | FY 2022-OB-02 | In FY 2023, in 394 of 5,304 (7.43%) 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 2023-OB-04 | FY 2022-OB-03 | In FY 2023, in 8 of 12 (66.7%) 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. | Continued |
| FY 2023-OB-05 | FY 2022-OB-04 | In FY 2023, in 16% (21 of 130) of retaliation case files, accurate filing dates were not entered into WebIMIS. | During quarterly meetings, OSHA will monitor that correct filing dates are entered into WebIMIS. | Continued |
| FY 2023-OB-06 |  | In FY 2023, 79% (103 of 130) of retaliation case files lacked the required documentation, specifically proof of delivery of official letters. | OSHA will monitor the lack of required  documentation during quarterly meetings with DOSH. | New |
| FY 2023-OB-07 |  | In FY 2023, agreement for the complainant to  administratively close the case was not obtained in 71% (63 of 88) of the retaliation case files reviewed. | OSHA will monitor that DOSH discrimination investigators are obtaining agreement for complainants to administratively close cases during the quarterly meeting with DOSH. | New |
| FY 2023-OB-08 | FY-2022-OB-07 | In FY 2023, 8 out of 11 (72%) state and local government workplace consultation files with 10 or more employees at the worksite, did not have the OSHA 300 logs in the file. | OSHA will discuss with DOSH during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a file review during the next comprehensive FAME. | Continued |
| FY 2023-OB-09 | FY 2022-OB-08 | In FY 2023, in 10 out of 22 (45%) private sector consultation files with 10 or more employees at the worksite, the OSHA 300 logs were not in the file**.** | OSHA will discuss with DOSH during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a file review during the next comprehensive FAME. | Continued |
| FY 2023-OB-10 |  | In FY 2023, in 6 out of 22 (27%) private sector consultation files with 10 or more employees at the worksite, there was no comparison of the employer DART rate to the national average. | OSHA will discuss with DOSH during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a file review during the next comprehensive FAME. | New |
|  | FY 2022-OB-05 | In 3% (2 of 80) of administratively closed  case files, complaints were improperly closed for untimeliness; however, both complaints were filed timely. |  | Completed |
|  | FY 2022-OB-06 | 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). |  | Completed |
|  | FY 2022-OB-09 | 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. |  | Completed |

| FY 2022-# | Finding | Recommendation | State Plan Corrective Action | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| 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. | The Beryllium Standard for General Industry and Construction listed as overdue is complete. For the remaining Standards, DOSH will continue to make every effort to adopt OSHA standards as soon as possible. However, 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. | In FY 22 and FY 23 all except COVID-19 related standards were adopted on time. DOSH used other enforcement mechanisms under state law to protect workers from COVID-19 hazards. There are older standards which still need to be adopted. | Continued |
| 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. | DOSH Discrimination Investigators provide complainants the opportunity to rebut the employer’s defense and the information is expected to be included in the final closing report “that the complainant’s were given the opportunity for rebuttal” during the closing conference. Complainants are given a copy of the closing conference highlights document that includes this information.  Since 2021 DOSH Discrimination Investigators have added to their closing conference process asking complainants if they have any additional information or would like to rebut the employer’s defense.  We will be working with staff to remind them to capture this information in the case file. | Case file review in 2023 indicated DOSH adequately addressed and corrected this finding. | Completed |
| 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. | We have updated our Consultation Manual. It is in draft form and is anticipated to be finalized in August 2023. We are aware of these issues and will be providing training on this topic to staff in July. Supervisors and managers will be monitoring weekly progress and improvement. | The review of 22 state and local government workplace consultation files were reviewed. In FY23 it was noted that serious hazards were corrected timely and hazard verification documentation was provided. | Completed |
| 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. | We have updated our Consultation Manual. It is in draft form and is anticipated to be finalized in August 2023. We are aware of these issues and will be providing training on this topic to staff in July. Supervisors and managers will be monitoring weekly progress and improvement. | In FY 2023, 13 out of 46 (28%) private sector consultation files, the written report to the employer was not sent timely (within 20 working days). | Completed |
| 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. | We have updated our Consultation Manual. It is in draft form and is anticipated to be finalized in August 2023. We are aware of these issues and will be providing training on this topic to staff in July. Supervisors and managers will be monitoring weekly progress and improvement. | Form 16 is described in the DOSH consultation manual. | Completed |

**U.S. Department of Labor  
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)**

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 7.02 | 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) | 7.02 | 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) | 5.93 | 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) | 5.93 | 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) | 97.44% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.57 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 1.88 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 2.39% | +/- 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) | 4,131 | +/- 5% of  4,131 | 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 3,924.45 to 4,337.55 for safety. |
| 7b | Planned v. actual inspections (health) | 1,173 | +/- 5% of  969 | 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 920.55 to 1,017.45 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,953.20 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | $1,343.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | $2,201.70 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | $3,493.80 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | $3,544.96 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 31.08% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 30.10% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 86.67% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 39.79 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 52.31 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 100% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 92.57% | 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 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 3.29% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

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 14, 2023, as part of OSHA’s official end-of-year data run.

1. Washington State has ALEA provisions in DOSH reporting rules and Washington State Department of Health requirements. [↑](#footnote-ref-2)