



OCT 11 2012

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

FROM:

  
DAVID MICHAELS, PhD, MPH

SUBJECT:

State Plan Monitoring Measures

The attached guidance is provided to assist you in using the new State Activity Mandated Measures (SAMM) in your State Plan monitoring, beginning October 1, 2012 for the FY 2013 monitoring cycle.

We are providing a copy of this guidance to our State Plan partners and urge you to review the document both with your states and with your staff who are responsible for State Plan monitoring and coordination.

The new measures have been added to the current SAMM report. While the original SAMM indicators are still included on the report, these measures are now supplemental data to be used primarily for management purposes rather than the basis of the monitoring system.

If you have any questions or concerns about this guidance, please contact Doug Kalinowski, Director, Directorate of Cooperative and State Programs. As you know, OSHA and our State Plan partners have put in a great deal of work in developing and updating the SAMM. Thank you for your efforts and input.

Attachment

cc: State Designees

## **State Plan Monitoring Measures: Updated State Activity Mandated Measures (SAMM) Guidance**

### ***Background***

The Occupational Safety and Health Act of 1970 (“the Act”) encourages states to develop and operate their own job safety and health plans. Once a State Plan is approved under Section 18(b) of the Act, the Occupational Safety and Health Administration (OSHA) funds up to 50 percent of the program’s operating costs. Absent an approved State Plan, states are preempted from enforcing occupational safety and health standards. State Plans must provide standards and enforcement programs that are “at least as effective as” the federal OSHA program, conduct outreach, and cover public sector employees. OSHA is responsible for the monitoring and approval of State Plans.

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

As the State Plan Policies and Procedures Manual, CSP 01-00-002 outlines, the primary focus of OSHA’s monitoring of State Plans concerns the states’ achievement of their strategic goals, but OSHA must also ensure that states meet the mandates set out in Section 18 of the Act and 29 CFR 1902. These include such required program elements as responding to complaints and fatalities, citing and penalizing violations, and covering public sector employers and employees. Review of the mandated activity measures is designed to ensure that the mandated activities are being implemented at a level consistent with and as effective as the Federal program. State performance of mandated activities is addressed by one of two means: program assurances to be included as part of the 23(g) grant application and State Activity Mandated Measures (SAMMs), which are tracked on a quarterly basis by comparing State activity data to an established reference point.

The SAMM Report has been updated for FY 2013 as a result of the efforts of the At Least As Effective (ALAE) Workgroup, Occupational Safety and Health State Plan Association (OSHSPA), OSHA and our stakeholders.

The purpose of the At Least As Effective (ALAE) Workgroup, composed of State members of OSHSPA and Federal OSHA representatives, is to develop measures of effectiveness and a more systematic monitoring system (in place of the interim guidance) to ensure consistency and effectiveness across State Plans. After several meetings and much discussion, the group achieved consensus on 15 enforcement-related measures. Most of these measures address performance areas that are mandated by the OSH Act, such as the ability to gain entry into establishments to conduct inspections and to respond to complaints. Some additional measures, such as enforcement presence, were added by the work group to give a more comprehensive picture of effectiveness.

OSHA held an informal stakeholder meeting on June 25, 2012 to solicit feedback on how to determine whether OSHA-approved State Plans are at least as effective as the federal OSHA program. The meeting provided a forum to gather information and ideas on key outcomes and activity-based indicators and how OSHA can use these indicators to assess the effectiveness of State Plans. Following the meeting, the ALAE Workgroup met to review highlights from the stakeholder meeting transcript and comments submitted through the docket with the goal of finalizing the proposed State Plan measures. The workgroup added three additional measures based on the stakeholder suggestions and feedback received from the meeting and public comments. This guidance rolls out these new measures for use in the FY 2013 monitoring cycle.

***Updated State Activity Mandated Measures (SAMMs)***

	<b>Indicator</b>	<b>Ref./FRL</b>
1	Planned vs. Actual Inspections – Safety/Health	Grant: +/- 5%
2	Percent of Total Inspections in the Public Sector	Negotiated
3	Average Number of Violations per NIC Inspection – SWR/Other	National: +/- 20%
4	Average current serious penalty (total and by size of employer)	National: +/- 25%
5	Percent of Enforcement Presence	National: +/-25%
6	Field Compliance Measure – Safety/Health	National: +/- 20%
7	Percent of Fatalities Responded to in 1 Work Day	100%
8	Open, Non-contested Cases with Abatement Incomplete > 60 Calendar Days	Negotiated
9	Average Lapse Time – Safety/Health	National: +/- 20%
10	Average Number of Work Days to Initiate Complaint Investigations	Negotiated
11	Average Number of Work Days to Initiate Complaint Inspections	Negotiated
12	Percent of Complaints and Referrals Responded to within 1 Work Day (Imminent Danger)	100%
13	Number of Denials where Entry Not Obtained	0
14	Percent of 11c Investigations Completed within 90 Calendar Days	100%
15	Average Number of Calendar Days to Complete an 11c Investigation	90
16	Percent of 11c Complaints that are Meritorious	National: +/- 20%
17	Percent Penalty Retained	National: +/- 15%
18	Percent of initial inspections with employee walk around representation or employee interview	100%

The updated SAMM report is primarily drawn from the old SAMM and the Enforcement Statistics report. A few measures are new to more directly address activities mandated by the Act, an additional whistleblower measure is drawn from WebIMIS, annual employment data is drawn from the Bureau of Labor Statistics and projected inspections are drawn from the annual grant applications.

Measures on the SAMM that are not listed above will be supplemental data to be used primarily for management purposes that should not constitute the basis of the monitoring system.

***State Plan Monitoring: Interpreting the Updated SAMM***

In addition to references or standards, further review levels have been added to the report as have been used in past monitoring efforts.

#### What does Negotiated mean?

Negotiated refers to a negotiated fixed number that has been agreed upon by the State Plan and OSHA regional office. OSHA acknowledges that each State Plan is different and faces unique demands, population, and supply of resources. As such, some measures have negotiated fixed numbers where the state and regional office should look at past data, the needs of the state, and the resources of the State Plan to determine the standard that should be used for a given measure. The agreed upon negotiated fixed number will then be used as the reference.

#### What are Standards?

Standards are the fixed numbers drawn from the Act. Both federal OSHA and the State Plans are required to adhere to these standards that are set by law, including 90 days to complete 11c investigations and responding to fatalities within one day.

#### What are further review levels (FRL)?

The further review levels are an acceptable range of variance from the national average. The national average is a rolling 3-year average of both State Plan and federal data that serves as the reference group. The further review levels not intended as a strict pass/fail test, but rather should serve as a guide for when to drill down to see what is happening at the ground level. The FRL serves as an indicator for monitors to take a closer look if a State Plan is outside the given range.

#### How should these references be used?

If the state is above or below the negotiated fixed number, outside the FRL, or does not meet the standard, the State Plan monitor should:

1. *Discuss the issue with the state at the quarterly monitoring meeting.* Both Federal and State reviewers must explore the cause and extent of data that fall outside the performance guides. Designated federal and state managers should discuss their findings and ideas about the significance of any performance variances and discuss what action should be taken. Depending on the size of the variance and its potential impact on the program, single-instance variances may be monitored for another quarter to see if they indicate an emerging trend. Some performance variations may represent performance problems, policy and procedure issues, others may represent data anomalies, and still others may signal the eventual need to reset a measurement standard or guide.
  - i. More time/data needed: See if the issue remains next quarter. If the review indicates a first-time, 3-month performance variance from the guide or standard or a statistically insignificant performance variance, additional review need not be automatic. On the other hand, the fact that a performance variance occurs for the first time does not necessarily rule out

further analysis. These circumstances call for the application of professional judgment.

- ii. Data problem. The initial discussion should fully address the question of data accuracy to be entirely certain the issue is not one of erroneous performance data or erroneous historic data.
  - iii. State is actively addressing the issue. The initial discussion should also determine the extent to which the issue is being assessed through the State's internal audit program or corrective action plan.
  - iv. Corrective action needed. Both the state and federal monitor may recognize the change in data or data trend that red flag a problem in the State Plan that, after much discussion, requires corrective action. Possible corrective courses of action should be discussed, agreed upon, and followed-up on at the following quarterly meeting.
2. *Additional analysis is needed*. If additional analysis is appropriate, OSHA will take the lead in analyzing cases concerning a mandated activity. Data collection and review of data should be joint, where practical. The data sources to be used and the method of evaluation should be discussed at the quarterly discussion, as should issues of potential data accuracy, where appropriate. Chapter 10 of the State Plan Policies and Procedures Manual (SPPPM) discusses potential evaluation tools, including case file review and accompanied visits, that may be used when needed. The issue may also be discussed in the Federal Annual Monitoring and Evaluation (FAME) report, at which point additional data could be obtained for the monitor to draw a conclusion to issue a finding and recommendation to correct the identified problem.

### ***Next Steps***

We will send out the complete algorithms of the new report once they are finalized. The Updated SAMM will be run on a quarterly basis and distributed to the Regions on the O-drive at O:\DCSP\Office of State Programs (OSP)\SAMM. We will send an e-mail notification when they are posted and ask that you then make these reports available to your States.