

Appendix A
FY 2010 Oregon OSHA Enhanced FAME Follow-up Report
Summary of New and Continuing Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-1	11c complaints are required to be in writing and notarized. BOLI stated that it is required to “verify” all complaints and that notarized complaints satisfy this requirement that complaints be verified. If BOLI takes a complaint by telephone, they will help the complainant to prepare a complaint. BOLI will provide notarization with no charge to a complainant or will help the complainant find a notary public where they live. If the complainant is unable to notarize their complaint at BOLI, presumably they will incur the cost to pay an outside notary public.	Accept 11c complaints as timely filed whether made orally or in writing and do away with the requirement of the written and notarized complaint.	New
10-2	BOLI managers said that 11c intake screeners complete a form titled <i>Naming Proper Respondents</i> .	Ensure that completed <i>Naming Proper Respondents</i> forms are placed in each open 11c file.	New
10-3	BOLI 11c files do not show how coverage is analyzed or determined.	Require 11c investigators to document in their case files the determination or confirmation that the parties are covered employers and employees.	New
10-4	The privately settled complaints reviewed did not have copies of the settlement agreements in the case file including the terms of the settlement. There is no indication in the file how the investigator decided that the settlement was fair and equitable or a make whole remedy. If the parties will not show a private settlement to BOLI for review, then BOLI must proceed with recommended litigation unless the complaint wants to withdraw the complaint.	Require that 11c investigators ask the parties to include BOLI in the settlement and provide a draft BOLI settlement agreement with pre-approved language, or alternatively, if the parties insist on entering into a private settlement, obtain a copy of the private agreement and determine whether the agreement is fair and equitable and was entered into in good faith and voluntarily.	New
10-5	Several case files were reviewed where it appeared that the case could have been referred to OSHA as a STAA complaint. Even though referrals are no longer required under Oregon state law, complainants should be informed of their rights to file complaints with OSHA.	Ensure that all 11c screeners and investigators know how to identify when a case falls under STAA or any of the other statutes for which OSHA has whistleblower enforcement responsibilities, and notify complainants of their rights to file complaints with OSHA.	New
10-6	BOLI investigators have 20-80 cases at any given time and 0-5 of these cases are Section 11(c) cases. Investigators are required to complete Section 11(c) cases within 90 days from the date the case is filed. Many of BOLI’s 11(c) dismissals are based on assumptions or evidence that is not in the file. OSHA is	Ensure that 11c cases are not dismissed without supporting evidence to justify the reason for the dismissal. Also ensure that the respondent’s position is adequately tested and a proper search to find evidence that might corroborate or refute the complainant’s allegations is conducted.	New

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	<p>concerned that the current caseload combined with the timeliness requirement is influencing investigators to not conduct thorough investigations. In numerous instances the investigator dismissed a case before collecting, or attempting to collect, evidence that might corroborate or refute the complainant’s allegations or the respondent’s defense. There were cases that were dismissed based solely on assumptions that the employer’s stated non-discriminatory reason for the adverse action was true. Generally, we found witness interviews to be too brief, and document requests were minimal. In summary, OSHA is concerned about the lack of supporting evidence to justify dismissals.</p>		
<p>10-07</p>	<p>OSHA’s average gravity-based penalty [GBP] was about 3.4 times higher than Oregon OSHA’s [\$2,323 vs. \$675]. Most of the disparity between OR-OSHA’s penalties and those of OSHA can be attributed to the state’s low gravity-based penalties for low-probability serious hazards. After penalty adjustment factors were applied, the gap between state and federal penalties narrowed though the disparity remained significant [\$1,046 vs. \$435, 2.4 times greater].</p>	<p>Increase gravity-based penalty amounts significantly in order to encourage employer voluntary compliance and to serve as a strong deterrent. Make policy adjustments to raise penalty averages for serious violations.</p>	<p>Formerly 09-02 Repeated. Pending formal direction from OSHA on revised Federal penalty policy implementation.</p>