

State of Oregon

Department of Consumer and Business Services
Oregon OSHA

Enhanced Federal Annual Monitoring and Evaluation Report
of the Oregon Occupational Safety and Health Program

October 1, 2009, through September 30, 2010

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APPENDIX A – FY 2010 Findings and Recommendations

APPENDIX B – FY 2009 EFAME Findings and Recommendations

APPENDIX C – Enforcement Comparison

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APPENDIX F – FY 2010 State OSHA Annual Report (SOAR) [\(available separately\)](#)

Executive Summary

The state of Oregon, under an agreement with OSHA, operates an occupational safety and health program in accordance with Section 18 of the Occupational Safety and Health Act of 1970. OSHA monitors state plans to ensure that they are at least as effective as the federal program, and reports annually on state performance. The Oregon Occupational Safety and Health Division (OR-OSHA), which is part of the Department of Consumer and Business Services, administers the state's program.

This report is a follow-up to the FY 2009 Enhanced Federal Annual Monitoring and Evaluation (EFAME) report and focuses on OR-OSHA's responses to the recommendations in that report, including the State's follow-up actions and OSHA's findings from its state plan monitoring activities in 2010.

There were two recommendations contained in the EFAME report. The first pertained to the need for OR-OSHA to reduce its average lapse time for issuing health citations. During FY 2010, performance in this area improved by nine days but OR-OSHA continued to exceed the average for states as a whole by four days; OSHA will continue to monitor this area in FY 2011. The second recommendation pertained to increasing penalties in order to deter violators and encourage voluntary compliance. During FY 2010, there was no appreciable change in OR-OSHA's average penalty. However, the state posted a "discussion document" on its website and held a series of public forums seeking input from stakeholders on ways to change the penalty structure. OR-OSHA now plans to file a formal proposal by mid-summer 2011, and is awaiting formal direction from OSHA on revised federal penalty policy implementation. A detailed description of the status of both recommendations is included herein as Appendix B.

Overall, OSHA found that the state is operating an enforcement program which directs resources to where they are most needed. OR-OSHA's revised scheduling system is designed to improve the state's ability to inspect workplaces with the most serious hazards and exposures. OR-OSHA's performance with respect to other activities that are mandated by the Occupational Safety and Health Act and its implementing policies and regulations continued to be very good. For example, Oregon's performance in timely responding to complaints, imminent dangers and appeals was good and there were no denials of entry. OSHA did, however, in an on-site audit, identify areas in need of improvement with regard to the state's discrimination program which is administered under a contract between OR-OSHA and the Oregon Bureau of Labor and Industries (BOLI).

The following is a list of current recommendations contained in this report. Six concern Oregon's discrimination program and one is a recommendation continued from FY 2009 about Oregon's penalties:

Recommendation 10-1: Accept 11(c) complaints as timely filed whether made orally or in writing and do away with the requirement of the written and notarized complaint.

Recommendation 10-2: Ensure that completed *Naming Proper Respondents* forms are placed in each open 11(c) file.

Recommendation 10-3: Require 11(c) investigators to document in their case files the determination or confirmation that the parties are covered employers and employees.

Recommendation 10-4: Require that 11(c) 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.

Recommendation 10-5: Ensure that all 11(c) 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.

Recommendation 10-6: Ensure that 11(c) 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.

Recommendation 10-7 (09-2): 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.

Oregon-OSHA accomplished all three of its strategic goals, covering the five-year period of FY 2006 through FY 2010, as summarized below.

With respect to its first strategic goal, the state promoted employer self-sufficiency as a means of reducing injuries and illnesses. OR-OSHA's recognition programs, as well as its partnerships with and education of employers and employees, contributed to the accomplishments of this strategic goal.

The state's second goal was to reduce injuries, illnesses and fatalities by working with employers to reduce occupational hazards and exposures. One of the many ways OR-OSHA accomplished this was to direct enforcement resources to high hazard locations. In the area of health inspections, the state concentrated on specific hazards, such as combustible dusts and methylene chloride. Other areas of focus included process safety management, logging, and construction.

Oregon OSHA's third strategic goal was to continuously improve its delivery of services

in order to maximize the agency's effectiveness. Part of this effort included specific timeliness goals for activities ranging from discrimination investigations to responses to fatalities. The state also measured customer satisfaction through surveys. OR-OSHA consistently accomplished the majority of its performance goals from year to year. Those successes have enabled OR-OSHA to accomplish this strategic goal.

Introduction

The state of Oregon, under an agreement with OSHA, operates an occupational safety and health program in accordance with Section 18 of the Occupational Safety and Health Act of 1970. The Oregon state plan was submitted on April 28, 1972, and was certified on September 15, 1982, after all developmental steps as specified in the plan had been completed. In May of 2005, after a full opportunity for public review and comment and a comprehensive program evaluation, OSHA granted final approval to the Oregon program, with the exception of its temporary labor camp enforcement. This significant achievement confirmed that Oregon OSHA's program in actual operations is at least as effective as the federal program with respect to issues covered by that decision. For additional information, please refer to Federal Register, Volume 70, No. 91, pages 24947-24955, May 12, 2005.

OSHA monitors state plans to ensure that they are at least as effective as the federal program, and reports annually on state performance. Beginning in 1997, OSHA used strategic plans to establish five-year goals and objectives, and required state plan states to do likewise. As part of this process, states were asked to develop performance plans that would ultimately lead to the achievement of their five-year goals, and to include such performance plans in annual 23(g) grant applications.

Evaluation Methodology. This FAME evaluates state performance of required (mandated) performance areas and related enforcement activities. It also evaluates state performance at achieving its own performance goals as outlined in its grant application. The report represents the combined efforts of OSHA's Seattle Regional and Portland Area Offices, and covers federal fiscal year 2010, which is the period from October 1, 2009, through September 30, 2010.

The opinions, analyses, and conclusions described herein are based on information obtained from a variety of sources, including:

- 40 case file reviews and other documents on discrimination program
- State Activity Mandated Measures (SAMM) report data (Appendix D).
- State Information Report (SIR) data (Appendix E).
- Other statistical reports comparing state performance to federal performance.
- Quarterly monitoring meetings between OSHA and the state.
- OSHA review of Oregon's Corrective Action Plan (CAP) progress.
- The State OSHA Annual Report (SOAR) prepared by Oregon OSHA.

Background. The Oregon Occupational Safety and Health Division (OR-OSHA) is part of the Oregon Department of Consumer and Business Services (DCBS). The administrator of Oregon OSHA is the designee for the Oregon state plan. The administrator's position is supported by a deputy administrator. Oregon OSHA has field offices in Portland, Salem, Eugene, Medford, Pendleton and Bend.

Over the years, Oregon has adopted a number of major safety and health standards that, while deemed as effective as comparable federal standards, also have significant differences. Oregon has also adopted a number of state-initiated rules for which there are no federal counterparts, including Forest Activity Standards, Agricultural Standards, and Firefighter Standards. Oregon OSHA's rules, the Oregon Safe Employment Act, letters of interpretation, and recent rule activity can be accessed via the Rules and Compliance section of the Oregon OSHA website.

Appeals specialists review appealed citations and conduct informal conferences in an effort to resolve contested Oregon OSHA enforcement cases. Appealed cases not resolved by informal conferences are referred to the Workers' Compensation Board Hearings Division. Administrative Law Judges (ALJs) in the Hearing Division conduct contested case hearings for Oregon OSHA citations and orders. Orders of the Workers' Compensation Board may be appealed to the Oregon Court of Appeals.

In Oregon, the Bureau of Labor and Industries (BOLI) has statutory responsibility for accepting, processing and making determinations on complaints alleging occupational safety and health discrimination. Rules pertaining to the processing of these complaints are contained in Division 438 of Oregon's Administrative Rules. BOLI is reimbursed by Oregon OSHA for costs associated with conducting discrimination investigations.

The state plan is staffed as follows: 68 compliance officers (45 safety and 23 health); 31, 100% state-funded consultants (19 safety and 12 health); and 4 consultants (2 safety and 2 health) that are funded under a 21(d) cooperative agreement. In addition, the state supplements its 23(g) compliance staff with nine safety compliance officers and five health compliance officers who are funded with 100% state monies. The program covers approximately 1.76 million workers employed by 92,058 employers in 125,555 locations around the state. In addition to the federal share, the Oregon OSHA program is funded by the Oregon workers' compensation fund.

The total level of funding for the program for FY 2010 is indicated below and shows both the federal and state share for 23(g) compliance and the 21(d) private sector consultation programs:

Program	Federal	State	Total
OR 23(g)	\$6,230,109	\$6,230,109	\$12,460,218
OR 21(d)	\$419,409	\$46,379	\$465,788
Grand Total:	\$6,649,518	\$6,276,488	\$12,926,006

In addition, Oregon allocated \$10,487,709 in 100% state monies to program operations.

Oregon OSHA has jurisdiction over most workplaces in the state. Exceptions include workplaces covered by OSHA, such as private sector establishments on Native American reservations and tribal trust lands, including Native American-owned enterprises. OSHA also covers federal agencies; the U.S. Postal Service; contractors on U.S. military reservations; private employers and federal government employers at Crater Lake; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals.

Major New Issues

Oregon OSHA continued to struggle with budget issues related to the recession. In addition to furloughs, some positions were eliminated. Nonetheless, the state has ensured that its position authority for field enforcement staffing will remain at or above benchmark levels.

Assessment of OR-OSHA Performance in Fiscal Year 2010

A. ASSESSMENT OF OR-OSHA PERFORMANCE IN MANDATED AND OTHER RELATED ACTIVITIES

This portion of the FY 2010 FAME report discusses Oregon OSHA's performance in program areas mandated by OSHA. OR-OSHA has the necessary rules, policies and procedures in place to carry out those mandates in that it has adopted its response to the revised OSHA's Field Operations Manual (FOM), appropriate compliance program directives and administrative rules.

OSHA's assessment is based on information from grant assurances and statistical reports; reviews of case files; discussions between OSHA and OR-OSHA at quarterly meetings; and staff interviews. Recommendations for improvement are made, where appropriate.

1. Enforcement

The following is an assessment of Oregon's performance under the mandated program areas. Monitoring data have come from grant assurances, statistical reports, case file reviews and interviews.

Complaints. Ensure that safety and health complaint processing is timely and effective, including notification of complainants and appropriateness of the State's responses.

OR-OSHA has tiered criteria for measuring complaint responsiveness: imminent danger complaint inspections, initiate within 24 hours; serious complaint inspections, initiate within five working days; other-than-serious complaint inspections, initiate within 30 working days; phone/fax response, initiate within 10 working days. The state's goal is 95% timeliness for initiating responses to complaints. Performance goal 3.1 of the state's SOAR reports on the state's corresponding performance for each. OR-OSHA's timeliness rates are as follows:

- 98.5% (64/65) for imminent danger complaints.
- 95.3% (346/363) for serious complaints.
- 99% (286/289) for other-than-serious complaints.
- 96.8% (448/463) for phone/fax investigations.

The state exceeded its criteria for acceptable performance in all four categories.

Fatalities and Catastrophes. Ensure fatalities and catastrophes are investigated properly, including responding timely to incidents and making contact with the families of victims.

OR-OSHA investigated 23 fatalities in FY 2010, responding timely (within one day) in 21 out of the 23 cases (91.3%). In one of the untimely responses the cause of death initially was unclear, and the other untimely response was because it was a motor vehicle accident and initially it was difficult to determine the employer. The number of work-related fatalities declined from 27 in FY 2009 to 23 in FY 2010. OR-OSHA's response to fatalities continues to be acceptable.

Imminent Danger. Ensure imminent-danger situations are responded to promptly and appropriately.

As with OSHA, it is OR-OSHA's policy to inspect imminent danger complaints and referrals within 24 hours of notification. During FY 2010, OR-OSHA met this timeliness requirement in 64 of 67 instances (98.5%). The SAMM report shows 64/67 responded timely; however, two NCR entries should have been entered serious, not imminent danger. This has been corrected in the database. The reason for the untimely response was due to the CSHO waiting for the activity to resume on the employer's work site. The state's performance in this area is acceptable.

Compliance Inspections. Ensure an effective program is in place allowing the conduct of unannounced enforcement inspections (both programmed¹ and unprogrammed²).

OR-OSHA conducted 5,261 inspections during FY 2010, which is 96% (5261/5500) of the inspections they projected. During this period, 4,326 safety inspections were conducted, of which 3,563 were programmed; 935 health inspections were conducted, of which 385 were programmed. In light of OR-OSHA having a 16% vacancy rate, compared to a normal vacancy rate of 8-10%, their inspection activity remains acceptable.

Employee and Union Involvement. Ensure employees are allowed to participate in inspection activities.

OR-OSHA's policies and procedures require that employees be offered the opportunity to participate in inspections. Historically, there has never been a problem in this category during accompanied visits. Such was the case again this year.

¹ Programmed inspections are scheduled based upon objective or neutral selection criteria. Examples include national and local emphasis programs which target inspections in high-hazard industries.

² Unprogrammed inspections are conducted in response to imminent dangers, fatalities, catastrophes, complaints and referrals.

Citations. Ensure timely issuance of citations.

The lapse time from opening conference to citation issuance for safety inspections in Oregon was 36 calendar days in FY 2010. This is better than the corresponding national average of 47 days.

For health inspections, OR-OSHA averaged 66 days from opening conference to citation issuance. Performance in this area improved by nine days but OR-OSHA continued to exceed the average for states as a whole by four days. At the end of the first quarter of FY 2011, Oregon OSHA had reduced its lapse time to 5.3 days below the average for states as a whole. OSHA will continue to monitor this area in FY 2011.

Penalties. Ensure appropriate penalties for serious violations.

Last year, OSHA conducted a baseline special study to examine OR-OSHA's penalty assessments and adjustments. OSHA conducted case file reviews (CFRs) of inspections conducted by Oregon OSHA's Portland Field Office in FY 2009. The study compared penalties assessed by Oregon OSHA to those assessed by OSHA to determine whether there were significant differences and, if so, to identify contributing factors.

The conclusion of the special study was: OR-OSHA's penalties were very low and 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, although the disparity remained significant. OSHA recommended OR-OSHA increase gravity-based penalties significantly in order to encourage employer voluntary compliance and to serve as a strong deterrent. OR-OSHA was asked to make policy adjustments to raise penalty averages for serious violations.

OR-OSHA's average initial penalty per serious violation in the private sector during FY 2010 was \$321.92. This is slightly lower than OR-OSHA's average penalty of \$364.29 in FY 2009.

In 2010, OR-OSHA held a series of public forums to seek input on the agency's penalty structure and ways it might be changed. A "discussion document" was posted on the State's website which provided background information and items for further discussion at these forums. In addition, the agency obtained input from the OR-OSHA Partnership Committee. Also in 2010, a new governor took office in Oregon and there was a change in the makeup of the legislature, which made it important for OR-OSHA to be sensitive to the timing of any proposal to alter its penalty policy. As of the second quarter of FY 2011, the state planned to meet with a stakeholder group comprised of about two dozen employers (private and public sector) and labor representatives to develop a proposal for changing

the rules on penalty calculations and assessments. OR-OSHA now anticipates filing a formal proposal by mid-summer 2011. OSHA intends to continue monitoring OR-OSHA progress toward increasing their penalties. Oregon OSHA progress will be discussed during quarterly meetings.

Abatement. *Ensure an effective mechanism exists for assurance of hazard abatement.*

OR-OSHA requires that serious hazards be abated, and that adequate verification of correction be included in the case file. Oregon timely verified abatement of Serious, Willful and Repeat violations 94% (3108/3294) for the Private Sector, and 99% (84/85) for the Public Sector. Additionally, OR-OSHA has a statute that requires employers to abate cited hazards even if the citation has been appealed. In light of the high rate of timely verification and unique state abatement requirements, the state's timely abatement verification rate remains acceptable.

Recordkeeping and Reporting. *Ensure rules are in place requiring employer recordkeeping of workplace injuries and illness, and timely reporting of workplace fatalities and catastrophes.*

OR-OSHA regulations for maintaining records of workplace injuries and illnesses are comparable to OSHA's. OR-OSHA regulations for reporting workplace fatalities and catastrophes differ from OSHA's in that the state requires employers to report the work-related hospitalization of one or more employees compared with the OSHA requirement of three or more.

Denials of Entry. *Ensure an effective mechanism is in place to obtain inspection warrants when denials of entry occur.*

OR-OSHA has always had very fast and effective mechanisms to obtain warrants when compliance officers are denied entry. There were no denials during FY 2010.

Review Procedures. *Ensure effective mechanisms are in place to provide employers the right of review of alleged violations, abatement periods, and proposed penalties; that employees or their representatives have an opportunity to participate in the review proceedings and contest abatement dates.*

Oregon's Administrative Code and OR-OSHA's Compliance Manual afford employers the right to administrative and judicial review of alleged violations, proposed penalties, and abatement periods. These procedures also give employees or their representatives the opportunity to participate in review proceedings and to contest citation abatement dates.

Employers have the right to discuss citations informally with Oregon OSHA (see Oregon Administrative Rules (OAR) 437-001-0255). Oregon's rules at OAR 438-085-0111 provide employers with the right to contest citations and penalties. Those rules also provide employees with the right to object to assigned abatement dates.

In Oregon, most employer citation appeals are resolved by informal settlement. In FY 2010, OR-OSHA held 440 informal settlement conferences which resulted in settlements in 383 (87%) of those cases. Opinions and Orders issued by hearing referees during this period resulted in Oregon OSHA's position being affirmed in 84% out of the instances contested.

Oregon's Court of Appeals found in OR-OSHA's favor in both of the two decisions issued in FY 2010. Parties are awaiting decisions in two other cases. There were no Oregon Supreme Court decisions issued in FY 2010.

For informational purposes, OSHA issues a quarterly State Indicator Report (SIR) for each state program. In comparing OR-OSHA's FY 2010 performance to OSHA's in areas such as vacating or reclassifying violations and retention of penalties after appeal, Oregon's performance was better than OSHA's.

Public Employee Program. Ensure a representative share of safety and health enforcement inspections is conducted in the public sector.

In FY 2010, a little over three percent of safety and health inspections (165 out of 5,261 total inspections) involved public sector employers. This is slightly lower than the five percent OR-OSHA projected in its FY 2010 Annual Performance Plan. OR-OSHA concentrated their enforcement activities on high hazard industry inspections in the private sector during this rating period. Therefore, the percent of safety and health enforcement inspections declined from five percent during FY 2009 to three percent in FY 2010. OSHA finds that the explanation for the percentage of public sector inspections acceptable.

Information Management. Use of IMIS reports for program management; accuracy and integrity of data; timeliness of data entry and updates.

Although OSHA, Region X, does not routinely audit OR-OSHA's performance with regard to information management, other methods are used to ensure the integrity of the data. For example, OSHA meets quarterly with representatives of OR-OSHA to review program performance. Prior to such meetings, IMIS reports are run by the Portland Area Office for purposes of gauging the state's performance with respect to mandated activities. Likewise, the state updates its report on performance against the goals in its annual plan. In order for such reports to be accurate, the data need to be properly entered in a timely fashion; if any issues or concerns about data integrity arise, they are discussed at quarterly meetings in order to achieve resolution.

In addition to the above, the Seattle Regional Office monitors the IMIS monthly to ensure that the state plans in Region X enter OSHA-170 information for fatalities they investigate. Also, responses are prepared for ad hoc requests for clarification or correction of state data in the IMIS.

Bureau of Labor Statistics (BLS) Rates. Review state-specific rates to determine trends; compare to targeting and emphasis programs for correlation.

An overview of Oregon's private industry TCIR³ and DART⁴ rates for calendar years 2005 through 2009, as well as for select industries, is provided in the table that follows. At the close of this monitoring period, 2009 was the most recent calendar year for which data were available. [Data source: www.bls.gov]

	CY 2005	CY 2006	CY 2007	CY 2008	CY 2009	% Change, 05-09	% Change, 07-09
Private Industry							
TCIR	5.4	5.3	5.1	4.6	4.4	-18.5%	-13.7%
DART	2.9	2.8	2.8	2.5	2.3	-20.7%	-17.9%
Construction, NAICS⁵ 23							
TCIR	8.0	6.3	6.8	5.4	4.6	-42.5%	-32.4%
DART	4.2	2.9	3.4	3.0	2.0	-52.4%	-41.2%
Manufacturing, NAICS 31-33							
TCIR	7.5	7.0	6.5	5.7	4.7	-37.3%	-27.7%
DART	4.2	4.0	3.6	3.2	2.8	-33.3%	-22.2%
State and local government							
TCIR	5.7	4.8	5.4	4.8	5.2	-8.8%	-3.7%
DART	2.7	2.8	2.6	2.3	2.5	-7.4%	-3.8%

³ TCIR is the total case incident rate, which represents the number of recordable injuries and illnesses per 100 full-time workers, calculated as: $(N/EH) \times 200,000$ where N = number of injuries and illnesses; EH = total hours worked by all employees during the calendar year; and 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year).

⁴ DART is the days away from work, job transfer, or restriction rate, which represents the number of such cases per 100 full-time workers. Calculation of the DART rate is similar to that of TCIR.

⁵ NAICS is the North American Industry Classification System.

2. Standards Adoption and Variance Actions

Ensure new and revised standards are adopted within required time frames and variance applications are processed properly and decisions justified.

Standards – OR-OSHA has acceptable procedures for promulgating standards that are at-least-as-effective-as those issued by OSHA. During this evaluation period, there were three final rules issued by OSHA. The state adopted the *Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards* rule and the *Safety Standards for Steel Erection – Technical Amendment* rule within the required time period. The state has notified OSHA that it intends to adopt the *Cranes and Derricks in Construction* rule within the required time frame.

Variances – The state reported seven variance actions during this evaluation period. One permanent variance was granted and six permanent variances were revoked because they were no longer needed. During the previous three years of reporting, OR-OSHA granted two permanent variances. No temporary variances were granted in the last three report years.

The variance applications were handled properly and the decision to grant the variance was justified.

Federal Program Changes (FPCs) and State-Initiated Changes (SICs). Ensure timely adoption of program changes.

Federal Program Change Responses: In FY 2010, OR-OSHA timely acknowledged all 13 of the federal program changes that were issued by OSHA. OR-OSHA was timely in providing final responses to all FY 2010 federal program changes for which a final response was due in the fiscal year.

State-initiated: OR-OSHA timely submitted all 11 of its state-initiated changes this period. The quality of OR-OSHA's state-initiated changes as well as OR-OSHA's responses to federal program changes continues to be excellent.

3. Voluntary Compliance

Ensure the existence and implementation of an appropriate program to encourage voluntary compliance by employers through consultation and intervention.

The majority of Oregon OSHA's consultative visits are conducted by 100% state-funded consultants. These consultants provide consultation services to both public and private employers. No deficiencies with respect to the performance of those 100% state funded consultants were identified in FY 2010.

4. Discrimination Program

Ensure the state provides necessary and appropriate protection against employee discharge or discrimination.

Section 654.062 (5) of the Oregon Safe Employment Act provides for discrimination protection equivalent to that provided by federal OSHA. Oregon OSHA contracts with the Oregon Bureau of Labor and Industries (BOLI) for discrimination complaint investigations. The discrimination program is run by OR-OSHA's contractor, Oregon Bureau of Labor and Industries (BOLI).

The following table is a summary of discrimination activity during FY 2010.

Disposition	Totals
Total Cases from FY 2010	136
Cases Completed FY 2010	134
Cases completed timely	89%
Overage cases	15
~ Withdrawn	16
~ Dismissed	108
~ Merit	10
~ Settled	2
~ Settled Other	3
~ Reinstatement (if any)	0
~ Litigated	4
Investigators on staff	15

BOLI received 13 more complaints than in FY 2009 and completed 28 more investigations. BOLI's timeliness of completed cases continues to be excellent, at 89%. BOLI's merit rate was 7.5%, significantly lower than the overall state plan rate of 21.2%.

In August of 2010, OSHA conducted an on-site audit of Oregon OSHA's state plan discrimination program. The period covered by OSHA's review was FY 2010. Forty case files were reviewed by OSHA. In addition to the 40 case files, the audit examined other records to determine whether the state abided by the policies and procedures established in its Whistleblower Investigations Manual. OSHA's complete audit report was transmitted to the state in December 2010. The audit report is summarized below with all recommendations and suggestions for improvement.

Intake Process

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.

Recommendation 10-1: Accept 11(c) complaints as timely filed whether made orally or in writing and do away with the requirement for a written and notarized complaint.

Coverage Determination

BOLI files contain a printout of the Oregon Secretary of State business entity data for respondents. BOLI files do not show how coverage is analyzed or determined. BOLI managers said that intake screeners complete a form titled *Naming Proper Respondents*.

Recommendation 10-2: Ensure that completed *Naming Proper Respondents* forms are placed in each open 11(c) file.

Recommendation 10-3: Require 11(c) investigators to document in their case files the determination or confirmation that the parties are covered employers and employees.

Suggestion: Consider including an informational sheet from OR-OSHA in each new 11(c) case file so the BOLI complaint screener and investigator will know how to determine coverage and jurisdiction.

Settled Cases

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. This is not consistent with OSHA’s settlement procedure or policy. All investigations where the investigator believes that there is sufficient evidence to disclose a violation, the settlement must be “make whole” or must provide all available remedies to the complainant. If the parties will not show a private settlement to BOLI for review, then BOLI must proceed with recommended litigation unless the complainant wants to withdraw the complaint. Settlements cannot be confidential, contain gag orders, and generally cannot ask the complainant to waive future employment.

Recommendation 10-4: Require that 11(c) 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.

Screening Complaints

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.

Recommendation 10-5: Ensure that all 11(c) 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.

Suggestion: Include a link on the BOLI website section entitled “Federal Discrimination Laws” or under its “Additional Links” to federal OSHA’s whistleblower program website - <http://www.whistleblowers.gov/index.html>.

Caseload of BOLI Investigators

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 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.

Recommendation 10-6: Ensure that 11(c) 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.

5. Complaints About State Program Administration (CASPA)

Ensure timely and thorough responses to CASPA allegations, investigative findings and recommendations for program improvement are provided by the state.

Three CASPAs were filed during FY 2010. CASPA O-187 regarding the adequacy of an OR-OSHA complaint inspection was found to be not valid. CASPA O-188 regarding the investigation of a discrimination complaint by the Oregon Bureau of Labor and Industries (BOLI) was likewise found to be not valid. A third CASPA also relating to an investigation of a discrimination complaint by the Oregon Bureau of Labor and Industries (BOLI) remains under investigation. In this latter case, OR-OSHA declined to provide an initial response to the CASPA allegations. The quality of the state's other two responses to our initial referrals of these CASPAs was very good.

6. Other Program Elements

Personnel-Benchmark Positions Authorized and Filled. Track the state's authorized field safety and health enforcement positions at or above benchmark levels and actual safety and health enforcement positions filled.

Oregon's safety enforcement benchmark is 47 with 54 positions identified. At the end of FY 2010, there were 46 positions filled. For health enforcement, both the benchmark and positions identified are 28 of which 24 were filled.

Under the 23g program, Oregon has 31 state-funded consultation positions (19 safety and 12 health). As of September 30, there were 27 state-funded consultation positions filled (17 safety and 10 health).

Laboratory. Accredited and participates in quality assurance program. .

OR-OSHA operates its own laboratory to analyze industrial hygiene samples. The laboratory is accredited by the American Industrial Hygiene Association and is a participant in the Proficiency Analytical Testing (PAT) Program. The laboratory was rated proficient for all contaminant categories of the PAT program for Rounds 179 through 182 covering this past year. The state has also been rated proficient for the BAPAT (Bulk Asbestos) program and has passed the previous three rounds of the program (Rounds A82-110, A83-210 and A84-310).

Summary Assessment of OR-OSHA Performance of Mandated and Related Activities

Oregon's performance with respect to activities that are mandated by the Occupational Safety and Health Act or its implementing policies and regulations continues to be acceptable. Improvement in the 11(c) program and resolution on how to increase Oregon's gravity-based penalty amounts are expected during FY 2011.

B. FISCAL YEAR 2010 ASSESSMENT OF OR-OSHA PROGRESS IN ACHIEVING ANNUAL AND FIVE YEAR STRATEGIC PERFORMANCE GOALS

Introduction. OR-OSHA's five-year strategic plan covers the period of FY 2006 through FY 2010. The plan includes performance goals which were approved by OSHA. OR-OSHA developed and submitted its FY 2010 performance goals in support of its strategic plan as part of its application for federal funds.

The following is OSHA's assessment of the state's performance against each of its FY 2010 performance goals and the extent to which the state achieved its FY 2006-2010 strategic goals. Oregon's more detailed report on its accomplishments with respect to its 2010 Annual Performance Plan goals is attached as Appendix F, the State OSHA Annual Report (SOAR).

Five Year Strategic Goal 1: Reduce injuries and illnesses by promoting employer self-sufficiency.

Performance Goal 1-1: Recognition Programs

Increase the number of new SHARP participants by 25 and the number of new VPP participants by four.

FY 2010 Performance Goal – Continue to encourage employers to attain VPP status, and certify five new SHARP employers and one new VPP site.

Results – Fourteen new sites received SHARP certification during FY 2010. Additionally, three sites withdrew from the program and three sites closed their businesses. A total of 72 new sites received SHARP certification, exceeding the five-year target by 47. Two new sites received VPP status in FY 2010.

OSHA's Assessment – This goal was exceeded.

Performance Goal 1-2: Education

Educate employers and employees regarding the value of occupational safety and health by increasing materials available for hard-to-reach audiences, providing workshops and conferences, and by working with safety committees on 85% of consultations with employers who have a safety committee.

FY 2010 Performance Goal 1-2a – Increase outreach opportunities to non-English speaking workers by marketing existing Spanish-language workshops and continuing to review publications for translation where the need is high.

Results – Thirty-five 4-hour workshops were presented in Spanish during the fiscal year, with a total of 223 attendees. In addition, there were four special topic training sessions: a training session to the Mexican Consulate, a

presentation at the Latino Summit in Texas, and two radio call-in programs. These activities drew an estimated 1,204 participants.

Three publications were translated into Spanish:

- *Material Safety Data Sheets – quick facts.*
- *Personal Protective Equipment – quick facts.*
- *Your Workplace Rights and Responsibilities.*

OSHA's Assessment – The goal was met.

FY 2010 Performance Goal 1-2b – Educate employers and employees regarding the value of occupational safety and health by: (1) providing conferences and workshops, including safety and the small business, and (2) working with safety committees on 85% of consultations with employers who have an active safety committee.

Results – Seven conferences were held during FY 2010 with a total of 1,468 participants. Five new on-line classes were added to 11 newly updated classes, with one additional on-line course offering in Spanish. Public education workshops, Internet courses, and on-site training sessions totaled 690 during FY 2010, with attendance reaching 12,499. An additional 1,017 participated in 10 on-line courses available in 40 different training sessions.

OSHA's Assessment – The goal was met.

Performance Goal 1-3: Partnerships

Promote occupational safety and health by maintaining existing partnerships and establishing five new partnerships, each with specific safety and/or health awareness improvement objectives.

FY 2010 Performance Goal 1.3: Enhance effectiveness of partnerships in advising OR-OSHA management on focus areas. Use existing partnerships to provide more specific focus to OR-OSHA activities.

Results – Partnerships continued to provide valuable expertise and contributions to Oregon's safety and health program. Numerous partnerships covering a wide variety of topics were active and effective in FY 2010.

OSHA's Assessment – The goal was met.

OSHA's Assessment of State Progress toward Accomplishing Strategic Goal 1 and FY 2010 Performance Goal 1: *Reduce injuries and illnesses by promoting employer self-sufficiency.*

Oregon OSHA met its first strategic goal to reduce injuries and illnesses by promoting employer self-sufficiency. The five-year goal of expanding occupational safety and health education by increasing materials for hard-to reach audiences, and providing workshops and conferences was accomplished. The PESO program, geared toward Spanish speaking workers in Oregon, grew with the addition of a bilingual glossary, 17 bilingual training modules, and six 4-hour Spanish-language workshops, including a workshop for safety committee members. An array of training materials and publications were translated into Spanish, along with several in Russian and Vietnamese. Within the 5-year time frame, an average of seven major conferences were held every year, where in addition to general health and safety topics, events focused on the logging, construction, and health care industries.

Additionally, Oregon OSHA met or exceeded each annual performance goal in FY 2010.

Five-Year Strategic Goal 2: Reduce injuries, illnesses and fatalities by working with employers to reduce occupational hazards and exposures.

FY 2010 Performance Goal 2-1: Safety & Health Hazards

Reduce the injury and illness DART rate by 10% by 2010 through focusing on targeted safety and health hazards.

FY 2010 Performance Goal 2-1a – Health enforcement will continue emphasis programs in the pesticide, lead in construction, silica, process safety management, diisocyanate and methylene chloride. A new emphasis program for combustible dusts is being introduced. Emphasis inspection targets are: pesticides, 60; lead in construction, 30; silica, 50; diisocyanate, 30; process safety management, 10; combustible dusts, 20. The total number of emphasis program inspections was 200.

Results – OR-OSHA's pesticide inspection goal was 60 inspections. By conducting 84 pesticide inspections, Oregon exceeded their goal by 24. OR-OSHA exceeded its inspection goal of lead in construction by 5. OR-OSHA failed to meet their yearly goal for silica by 21, for process safety management by 5, for diisocyanates by 14, and combustible dusts by 3. Oregon conducted 186 emphasis inspections in FY 2010, failing to meet their goal of 200 by 14 inspections.

OSHA's Assessment – The goal was not met. OR-OSHA's implementation of a new high hazard fixed site scheduling list (List A), adoption of the Hexavalent Chromium NEP, and Recordkeeping NEP, have understandably impacted OR-OSHA's ability to meet their emphasis program inspection goal.

FY 2010 Performance Goal 2-1b – High hazard industries with the highest number of claims will be scheduled for inspection. Conduct at least 2,700 inspections in high hazard industries.

Results – OR-OSHA conducted 3,655 inspections in high hazard industries during FY 2010, therefore exceeding their goal of 2,700 high hazard inspections by 955. Oregon conducted a total of 5,261 inspections in FY 2010, and 69.5% (3655/5261) were in high hazard industries.

OSHA's Assessment – The goal was exceeded.

FY 2010 Performance Goal 2-2: Fatalities

Reduce the five-year average number of workplace fatalities by eight percent through scheduled inspections and interventions at work sites in targeted industries.

FY 2010 Performance Goal – Conduct 1,500 inspections in logging and construction. Address motor vehicle safety for all inspections and consultations where employees use motor vehicles.

Results – OR-OSHA conducted 1,455 construction inspections and 166 logging inspections, for a total of 1,621 inspections in logging and construction during FY 2010, therefore, exceeding their goal by 121 inspections. OR-OSHA investigated five motor vehicle accidents in FY 2010.

OSHA's Assessment – The goal was met.

Performance Goal 2-3: Ergonomics

Develop and implement a plan, including outreach, education and identification of high-risk industries for educating employers regarding musculoskeletal disorders, methods for reducing hazards, and the value of addressing ergonomic issues in the workplace.

FY 2010 Performance Goal – This year's focus for ergonomics will be on the health care industry. A particular initiative this year is a model Safe Patient Handling (SPH) program. A model process will be defined based on our experience with several pilot sites selected from Long Term Care (LTC) and rural hospital submissions. The "Facilities of Choice" will be a new certification program certifying LTC facilities meeting SPH requirements.

Results – Eleven classroom and five walk-through safe patient handling training sessions were conducted during the fiscal year. The "Facilities of Choice" projects continued with the development of Safe Patient Handling Programs. The Dallas Retirement Village developed policies and procedures for bariatric care. The Good Shepherd Health Care System redesigned their patient

satisfaction survey, and has expanded the program to home health services. Survey data from both facilities are contributing to the development of a video of pre/post-implementation procedures for moving patients.

A series of four pamphlets helping front line construction workers to understand the effects of musculoskeletal disorders was completed. A new "Construction Foreman Tool Box, which includes an ergonomic poster and instructor's manual, is currently under development.

OSHA's Assessment – The goal was met.

OSHA's Assessment of State Progress toward Accomplishing Strategic Goal 2 and FY 2010 Performance Goal 2: *Reduce injuries, illnesses and fatalities by working with employers to reduce occupational hazards and exposures.*

OR-OSHA concentrated their resources for meeting this goal primarily by focusing on high hazard locations. In the area of health inspections, OR-OSHA concentrated on specific health hazards, such as lead, silica, and process safety management. Although Oregon failed to meet their targeted goal of 200 by 14 inspections, the adoption and implantation of the Hexavalent Chromium and Recordkeeping NEPs understandably impacted this goal. Another area of focus to reduce fatalities was to conduct 1,500 inspections in logging and construction sites. OR-OSHA inspected 1,621 sites and exceeded this goal by 121 inspections. Overall, Oregon met this goal.

Additionally, Oregon OSHA met or exceeded each annual performance goal in FY 2010.

Five-Year Strategic Goal 3: Maximize OR-OSHA effectiveness by striving for continuous improvement in all areas of service delivery.

Performance Goal 3-1: Timeliness

Respond timely to 95% of all fatalities and hazard complaints, 80% of alleged discrimination complaints, 90% of all complainants, and provide timely information of OR-OSHA actions to family members 100% of the time.

FY 2010 Performance Goal – Investigations and inspections will be initiated timely in 95% of all reported fatalities and hazard complaints; complaint responses will be timely in 90% of all cases; family members will be notified 100% timely, and discrimination cases will be processed 80% timely.

Results – All but one of the above measures were met. The exception was that OR-OSHA responded to 21 out of 23 fatalities (91%) within 24 hours of notification. The two untimely responses were due to the cause of death initially was unclear, and the other untimely response was because it was a motor vehicle accident and it was difficult to determine the employer.

OSHA's Assessment – This goal was essentially met.

Performance Goal 3-2: Customer Service

Achieve and maintain the percent of positive responses to OR-OSHA customer surveys at 90% or above.

FY 2010 Performance Goal – Achieve and maintain customer satisfaction in the delivery of OR-OSHA programs and services as evidenced by a survey rating of 90% or above on each program survey.

Results – All of the survey findings released in FY 2010 exceeded the 90% satisfaction goal.

OSHA's Assessment – None.

Performance Goal 3-3: Staff Development

Eighty-five percent of safety and health staff will receive professional development annually through a variety of methods.

FY 2010 Performance Goal – Develop and deliver a two-day all staff professional development conference and complete basic training for new staff.

Results – Decreases in budget and training staff impacted the ability to deliver a two-day all staff professional development conference. In order to use more cost-effective methods of delivery, Oregon OSHA provided staff with more opportunities for e-learning and training through webinars. Professional staff participated in several webinars through Federal OSHA, ASSE, ACGIH, AIHA, and other safety and health organizations. Eighty-four percent of staff received professional training during FY 2010.

Oregon OSHA's work to revise its current curriculums for basic training continues as an ongoing project. For 2010, OR-OSHA developed and implemented: OSH Act and Standards, Recordkeeping, Electrical Safety, Accident Investigation (with interviewing module), Acetylene, Shipping Hazardous Material, and Masonry Wall Construction & Bracing.

On-line versions of the basic training modules for OSHA Discrimination and Shipping Hazardous Materials were developed, and are now available to Oregon OSHA staff.

OSHA's Assessment – In light of innovations in methodology of training delivery, we find this goal to be essentially met.

OSHA's Assessment of State Progress toward Accomplishing Strategic Goal 3 and FY 2010 Performance Goal 3: *Maximize OR-OSHA effectiveness by striving for continuous improvement in all areas of service delivery.*

Overall, Oregon OSHA essentially met its third strategic goal. OR-OSHA exceeded their goal of responding timely to complaints and essentially met their goal of responding timely to fatalities.

The five-year annual 85% goal for professional staff development was nearly met, with FY 2010 falling short to 84%. With decreases in budget and training staff impacting delivery, additional opportunities through e-learning and webinars ensured the availability of training opportunities for continued professional development.

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 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	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

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 #
	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.		
<u>10-07</u>	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].	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.	Formerly 09-02 Repeated. Pending formal direction from OSHA on revised Federal penalty policy implementation.

Appendix B
Oregon State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region X
Status of FY 2009 Findings, Recommendations, and Corrective Actions

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	For health inspections, OR-OSHA averaged 66 days from opening conference to citation issuance. This is nine days (16%) longer than the corresponding national average of 57 days, but also represents a two-day (3%) decrease in lapse time in comparison to the state's average health lapse time of 68 days in FY 2008. While OSHA commends OR-OSHA for reducing its health lapse time by three percent, additional reduction is needed.	Take remedial actions to reduce the average health lapse time. This is a repeat recommendation.	Oregon OSHA will correct this issue during the current federal fiscal year. We will do this by focused attention on eliminating unnecessary delays in health enforcement activities containing violations, which we expect to allow us to meet the current national average throughout FFY 2011.	For health inspections, OR-OSHA averaged 66 days from opening conference to citation issuance. Performance in this area improved by nine days but OR-OSHA continued to exceed the average for states as a whole by four days; At the end of the first quarter of FY 2011, Oregon OSHA had reduced its lapse time to 5.3 days below the average for states as a whole.	Completed.
09-2	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].	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.	OROSHA is in the process of developing a proposed change to its rules on penalty assessments and calculations. As part of that proposed rulemaking, they expect to propose increased penalties for larger employers (primarily by increasing the gravity-based penalty amounts), elimination of its sizable reductions for immediate abatement and for a one-year lower-than-average DART rate, and reductions for good faith and for an employer's overall history of compliance (as well as increases for poor faith and for a poor overall compliance history).	OR-OSHA held a series of public forums to seek input on the agency's penalty structure and ways it might be changed. A "discussion document" was posted on the State's Web site which provided background information and items for further discussion at these forums. In addition, the agency obtained input from the OR-OSHA Partnership Committee. Also in 2010, a new governor took office in Oregon and there was a change in the makeup of the legislature, which made it important for OR-OSHA to be sensitive to the timing of any proposal to alter its penalty policy. As of the second quarter of FY 2011, the state planned to meet with a	Continued. OR-OSHA now anticipates filing a formal proposal by mid-summer 2011. OSHA intends to continue monitoring OR-OSHA progress toward increasing their penalties. Oregon OSHA progress

Appendix B
Oregon State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region X
Status of FY 2009 Findings, Recommendations, and Corrective Actions

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				stakeholder group comprised of about two dozen employers (private and public sector) and labor representatives to develop a proposal for changing the rules on penalty calculations and assessments.	will be discussed during quarterly meetings.

**Appendix C
Oregon State Plan
FY 2010 Enforcement Activity**

	OR	State Plan Total	Federal OSHA
Total Inspections	5,268	57,124	40,993
Safety	4,328	45,023	34,337
% Safety	82%	79%	84%
Health	940	12,101	6,656
% Health	18%	21%	16%
Construction	1,422	22,993	24,430
% Construction	27%	40%	60%
Public Sector	165	8,031	N/A
% Public Sector	3%	14%	N/A
Programmed	3,704	35,085	24,759
% Programmed	70%	61%	60%
Complaint	813	8,986	8,027
% Complaint	15%	16%	20%
Accident	181	2,967	830
Insp w/ Viols Cited	3,708	34,109	29,136
% Insp w/ Viols Cited (NIC)	70%	60%	71%
% NIC w/ Serious Violations	58.8%	62.3%	88.2%
Total Violations	10,505	120,417	96,742
Serious	4,160	52,593	74,885
% Serious	40%	44%	77%
Willful	10	278	1,519
Repeat	151	2,054	2,758
Serious/Willful/Repeat	4,321	54,925	79,162
% S/W/R	43%	46%	82%
Failure to Abate	49	460	334
Other than Serious	6,135	65,031	17,244
% Other	58%	54%	18%
Avg # Violations/ Initial Inspection	2.7	3.4	3.2
Total Penalties	\$2,465,860	\$ 72,233,480	\$ 183,594,060
Avg Current Penalty / Serious Violation	\$ 299.80	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 295.30	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	0.0%	47.7%	40.9%
% Insp w/ Contested Viols	11.4%	14.4%	8.0%
Avg Case Hrs/Insp- Safety	12.2	16.2	18.6
Avg Case Hrs/Insp- Health	27.8	26.1	33
Lapse Days Insp to Citation Issued- Safety	25.9	33.6	37.9
Lapse Days Insp to Citation Issued- Health	48.6	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	71	1,715	2,510

Appendix D State Activity Mandated Measures (SAMM)

NOV 12, 2010

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U. S. D E P A R T M E N T O F L A B O R

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: OREGON

RID: 1054100

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate for each State	8552	527	Negotiated fixed number
Complaint Inspections	10.66 802	7.21 73	
2. Average number of days to initiate for each State	1513	134	Negotiated fixed number
Complaint Investigations	3.28 460	2.23 60	
3. Percent of Complaints where Complainants were notified on time	790 98.63 801	75 100.00 75	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	64 95.52 67	5 100.00 5	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	3108 94.35 3294	114 66.28 172	100%
Public	84 98.82 85	2 66.67 3	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety Data (1 year)	113114 35.57	13934 39.03	2624646 47.3 National
Health Data (1 year)	3180 44404 66.07	357 4668 56.24	55472 750805 61.9 National
	672	83	12129

*OR 11.12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix D State Activity Mandated Measures (SAMM)

NOV 12, 2010

PAGE 2 OF 2

U. S. D E P A R T M E N T O F L A B O R
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: OREGON

RID: 1054100

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
Safety Data (3 years)	1482 44.49	152 44.71	93201 58.4 National
Health Data (3 years)	3331 46.52	340 36.78	159705 10916 50.9 National
9. Average Violations per Inspection with Vioations			
S/W/R Data (3 years)	402 1.13	87 1.21	21459 428293 2.1 National
Other Data (3 years)	3852 1.59	440 1.65	201768 240266 1.2 National
10. Average Initial Penalty per Serious Violation (Private Sector Only) Data (3 years)	3852 1317974 321.92	440 154625 308.01	201768 509912690 1360.4 National
11. Percent of Total Inspections in Public Sector this State (3 years)	4094 165 3.13	502 9 2.12	374823 700 4.4 Data for
12. Average lapse time from receipt of Contest to first level decision Data (3 years)	5268 27016 78.99	425 4119 152.55	16076 3826802 217.8 National
13. Percent of 11c Investigations Completed within 90 days	342 118 88.72 133	27 2 100.00 2	17571 100%
14. Percent of 11c Complaints that are Meritorious Data (3 years)	10 7.52	0 .00	1461 21.2 National
15. Percent of Meritorious 11c	133 5	2 0	6902 1256

Appendix D
State Activity Mandated Measures (SAMM)

Complaints that are Settled		50.00				86.0	National
Data (3 years)		10			0		1461

*OR 11.12
ANALYSIS AND REVISION

**PRELIMINARY DATA SUBJECT TO

Appendix E State Indicator Report (SIR)

Q4 SIR41 101007 093305 PROBLEMS - CALL Yvonne Goodhall 202 693-1734

1101007

U. S. D E P A R T M E N T O F L A B O R

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = OREGON

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	5298	744	11403	1575	21912	3209	43788	6661
	62.4	75.3	63.8	76.0	65.1	77.0	65.9	78.0
	8493	988	17860	2073	33647	4167	66434	8542
B. HEALTH	488	121	1094	209	2232	378	4202	797
	30.6	49.6	33.7	45.4	35.0	43.0	35.1	45.6
	1597	244	3249	460	6378	879	11960	1748
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4663	574	9421	1231	17649	2531	34350	5303
	72.7	60.5	71.2	61.7	69.1	61.2	67.1	65.1
	6413	948	13232	1995	25525	4139	51214	8152
B. HEALTH	451	91	880	173	1756	309	3238	632
	57.8	61.5	53.9	63.8	55.4	63.7	53.4	57.6
	780	148	1632	271	3168	485	6066	1097
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	17341	732	33678	1583	62211	3291	117447	7178
	81.6	40.5	81.5	40.4	81.0	40.6	80.1	42.8
	21261	1809	41304	3914	76839	8104	146593	16785
B. HEALTH	3233	216	6183	372	11743	751	21554	1522
	69.6	34.1	70.5	32.5	70.2	36.0	69.6	36.3
	4645	633	8776	1146	16725	2086	30947	4188

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4. ABATEMENT PERIOD FOR VIOLS

	3054	39	6515	90	12732	181	25040	376
A. SAFETY PERCENT >30 DAYS	15.0	4.8	16.3	5.2	17.2	5.0	17.7	4.8
	20398	805	39855	1744	74010	3627	141219	7910
	255	12	633	26	1406	87	2977	183
B. HEALTH PERCENT >60 DAYS	5.6	3.2	7.3	4.0	8.5	6.7	9.6	6.8
	4548	377	8681	646	16580	1297	30862	2687

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = OREGON

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	587112	12300	1106734	17175	2038916	40270	3500911	164130
OTHER-THAN-SERIOUS	837.5	361.8	803.1	301.3	894.3	350.2	967.6	485.6
	701	34	1378	57	2280	115	3618	338
B. HEALTH								
	249175	1200	434447	2300	732953	4120	1039303	14610
OTHER-THAN-SERIOUS	817.0	150.0	801.6	135.3	835.8	132.9	842.2	231.9
	305	8	542	17	877	31	1234	63
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	9778	1229	20529	2537	38849	5181	76136	10432
	5.8	6.8	5.7	6.5	5.5	6.5	5.5	6.6
	1679	182	3593	391	7112	801	13925	1585
B. HEALTH								
	1864	302	3844	564	7547	1053	14276	2199
	2.1	3.6	2.0	3.1	1.9	2.8	1.8	2.8

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	908	84	1940	184	3898	377	8070	785
	1123	0	2474	0	5103	0	10425	0
7. VIOLATIONS VACATED %	3.7	.0	4.3	.0	4.7	.0	5.0	.0
	29962	2475	57441	4994	108213	9850	207527	20017
	844	0	1978	0	4276	0	9196	1
8. VIOLATIONS RECLASSIFIED %	2.8	.0	3.4	.0	4.0	.0	4.4	.0
	29962	2475	57441	4994	108213	9850	207527	20017
	15767907	333260	30073309	555210	57457651	1174810	111052615	2430009
9. PENALTY RETENTION %	64.5	100.0	63.9	100.0	63.0	100.0	62.8	100.0
	24439885	333260	47032897	555210	91194322	1174810	176868726	2430009

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT

STATE = OREGON

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	744	17	1575	38	3209	69	6661	276
	75.3	65.4	76.0	67.9	77.0	61.6	78.0	76.2
	988	26	2073	56	4167	112	8542	362
B. HEALTH	121	8	209	17	378	23	797	55
	49.6	61.5	45.4	54.8	43.0	46.0	45.6	52.4
	244	13	460	31	879	50	1748	105
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	732	13	1583	21	3291	70	7178	241
	40.5	32.5	40.4	28.0	40.6	39.1	42.8	39.3
	1809	40	3914	75	8104	179	16785	613
B. HEALTH	216	16	372	24	751	54	1522	111
	34.1	64.0	32.5	55.8	36.0	59.3	36.3	50.7
	633	25	1146	43	2086	91	4188	219

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = OREGON

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	610 22.5 2709	32 8.1 394	1134 23.2 4888	61 6.7 911	2052 21.9 9366	134 6.7 1996	3827 23.0 16668	274 7.3 3765
2. VIOLATIONS RECLASSIFIED %	306 11.3 2709	14 3.6 394	585 12.0 4888	27 3.0 911	1100 11.7 9366	63 3.2 1996	2217 13.3 16668	119 3.2 3765
3. PENALTY RETENTION %	4940512 65.3 7563023	126715 75.9 166865	7526155 62.3 12074308	275416 72.3 381131	12856359 58.1 22143463	632951 71.3 887356	23378285 58.4 40052611	1099796 71.3 1541746

Appendix F
State OSHA Annual Report (SOAR)

(Available separately)