

**FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME)
Report**

State of Oregon

**Department of Consumer and Business Services
Oregon OSHA**

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I. Executive Summary

The state of Oregon, under an agreement with OSHA, operates an occupational safety and health program through its Occupational Safety and Health Division (OR-OSHA), which is part of the Department of Consumer and Business Services. 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 state plan, with the exception of 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 approval.

The administrator of OR-OSHA is appointed by the director of the Oregon Department of Consumer and Business Services and serves as the designee for the state plan. The current administrator is Mr. Michael Wood.

Over the years, Oregon OSHA has adopted a number of major safety and health standards which, while deemed as effective as comparable federal standards, also have significant differences. OR-OSHA 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.

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.

Oregon OSHA exercises jurisdiction over state and local government workplaces and private sector employers not covered by OSHA in the state of Oregon. OSHA's inspection authority is limited to federal agencies; the U.S. Postal Service; contractors on U.S. military reservations; private employers and federal government employers at Crater Lake National Park; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals. OSHA also covers private sector establishments on Native American reservations and tribal trust lands, including Native American-owned enterprises.

In FY 2012, the state plan was staffed with 76 compliance officers and 27 consultants. The program covers approximately 1.6 million workers and 93,800 employers in more than 147,816 locations around the state. In FY 2012, OR-OSHA's federally-approved state OSHA program was funded at \$20,419,349 of which \$6,207,664 were federal funds.

OR-OSHA has staffed the consultation program with 27 consultants that are 100% state-funded and four additional consultants that provide private sector consultation under Section 21(d) of the Act.

Overall, OR-OSHA met or exceeded the majority of its FY 2012 performance goals and fulfilled its obligations with regard to activities mandated by OSHA. Where the need for program improvement was identified, recommendations are made herein for corrective actions. One of the most significant challenges which the state faced at the beginning of the fiscal year was the budget shortfall which carried over from the previous fiscal year and negatively impacted the state's ability to operate with a full complement of compliance staff. Despite this challenge, the state provided a consistent enforcement presence and exceeded its inspection goal.

The purpose of this Federal Annual Monitoring and Evaluation (FAME) report is to assess OR-OSHA's performance during FY 2012 with regard to activities mandated by OSHA, and to gauge the state's progress toward resolving recommendations from the FY 2011 FAME. As part of this abridged evaluation, OSHA reviewed a portion of OR-OSHA's enforcement inspection files to verify corrective actions for the FY 2011 recommendations. This report also assesses the state's achievement of its annual performance plan goals and its progress toward the goals in its five-year strategic plan.

OR-OSHA's performance with respect to activities that are mandated by the Occupational Safety and Health Act and its implementing policies and regulations continued to be acceptable.

The FY 2011 FAME report on OR-OSHA contained a total of three recommendations, all of which the state completed corrective actions for in FY 2012.

This FAME report contains a total of four recommendations, all of which relate to Oregon's discrimination program. They are as follows:

Recommendation 12-1: Ensure the correct filing date is entered into IMIS.

Recommendation 12-2: Prior to screening out a complaint, ensure that the complaint does not include elements of a prima facie complaint. Document the reason(s) for screening out such cases.

Recommendation 12-3: Ensure all screened complaints are entered into the IMIS "create intake" feature.

Recommendation 12-4: Ensure all evidence is adequately tested prior to dismissing or closing a case. Use appropriate justification for any closure and document in the case file accordingly.

II. Major New Issues

During an OSHA inspection, when documenting a violation of the OSH Act, there are four essential elements necessary to be established by the compliance officer: (1) that an OSHA standard applies; (2) a standard has been violated; (3) employee exposure to a hazardous condition; and (4) evidence that the employer had actual or constructive knowledge of the hazardous condition. Employer knowledge of the hazardous condition, whether the employer knew or, with the exercise of reasonable diligence, could have known of the presence of the hazardous condition, plays an integral role in holding an employer accountable for a violation of the OSH Act in a court of law.

Historically, Oregon OSHA has held employers accountable for a supervisor's knowledge in almost all circumstances, even when the supervisor was the only employee involved. However, in February 2012, the Oregon Court of Appeals' decision in *Oregon OSHA vs. CC&L Roofing* threw into question Oregon OSHA's previous understanding that knowledge should almost always be imputed to the employer. The court upheld an administrative law judge (ALJ) decision that the employer had done everything it could be expected to do, even though a supervisor participated in a violation that also exposed a subordinate employee to injury.

The issue concerning employer knowledge continues to emerge with employers during settlement discussions with OR-OSHA. In deferring to the ALJ's decision, the appellate court did not provide guidance as to how Oregon OSHA or an ALJ should determine whether an employer has provided sufficient evidence to absolve it of responsibility. Oregon's current guidance also does not fully address past enforcement practice for employer accountability of knowledge in these types of cases.

These concerns have led Oregon to pursue the issuance of an interpretive rule to address these issues. In addition, the state is evaluating another appellate court decision received early in 2013 that appears to establish a significant set of new requirements on Oregon OSHA in order to prove constructive (rather than actual) supervisor knowledge of a violation.

For more information on these cases and the new major issues concerning Oregon OSHA, please see Appendix E.

III. State Progress in Addressing FY 2011 FAME Report Recommendations

This section provides a summary of the status of the findings and recommendations from the FY 2011 FAME report. During FY 2012, corrective actions were completed and verified for all recommendations. Appendix C describes the status of each FY 2011 recommendation in detail.

Finding 11-1: OR-OSHA did not meet its inspection goals. OR-OSHA conducted 4,587 inspections during FY 2011 which fell short of its goal of 5,200 by 613 inspections, or 12%. The state experienced a high vacancy rate among enforcement staff during this period, which impacted its ability to achieve this goal.

Recommendation: Ensure appropriate inspection goals are set based on realistic expectations in consideration of current resources, abilities and training status of compliance staff, and properly allocated in order to achieve goals.

Status: Oregon OSHA addressed this recommendation by taking steps to make the FY 2012 inspection goals more realistic and ensure the goals were based on expected staffing and productivity levels. OSHA has verified this item as completed at the end of FY 2012 in that OR-OSHA exceeded its inspection goal of 4050 by 50 inspections (4100). The state has included more realistic inspection goals in its grant application for FY 2013 and continues to fill positions to more closely approximate its historic levels of inspections conducted. **OSHA considers this item complete.**

Finding 11-2: OR-OSHA's average initial penalty per serious violation in the private sector during FY 2011 was 79% lower than the national average and 66% below the total state plan average for both the public and private sector. A significant disparity between OSHA's average gravity-based penalty and OR-OSHA's continues to exist.

Recommendation: Revise penalty policies in order to encourage employer voluntary compliance and to serve as a strong deterrent. Make policy adjustments to raise penalty averages for serious violations.

Status: Oregon OSHA completed its rulemaking to improve penalty effectiveness; the rule went into effect in July 2012. This rule made changes to base penalty rates, size adjustments and history adjustments, and eliminated the substantial immediate abatement adjustment in favor of a broader and more modest "good faith" adjustment. It also changed to the identification of repeat violations and changes to penalties for multiple repeat violations. **OSHA considers this item complete.**

Finding 11-3: During a special study of agricultural inspection case files, it was found that of the 172 other-than-serious violations cited, 48 violations (or 28%) were identified to be misclassified by OR-OSHA. These violations were classified as other-than-serious where the classification should have been a serious or repeat violation.

Recommendation 11-3: Ensure the appropriate violation classification is determined based on the severity and probability of the hazard.

Status: Oregon OSHA has reinforced appropriate classification of violations with its enforcement staff, especially in relation to agriculture (the source of the finding). The state continues to focus its internal audit activities on violation classification as well as appropriate application of the new penalty rules. An audit is scheduled for completion by Oregon during FY 2013. The state's corrective action was verified by OSHA during an on-site case file review during FY 2012. **OSHA considers this item complete.**

IV. Assessment of FY 2012 State Performance of Mandated Activities

In addition to reviewing the State Activity Mandated Measures (SAMM), Oregon’s Annual Performance Plan (APP) and its five-year Strategic Plan, OSHA conducted a comprehensive review of the state’s discrimination program and fatality investigation case files. The following is an assessment of Oregon’s performance under the specific mandated program areas. Monitoring data came from grant assurances, statistical reports, case file reviews and interviews.

A. Enforcement

1. Complaints and Referrals

OR-OSHA has four-tiered criteria for measuring complaint responsiveness: imminent danger complaint inspections, initiate within 24 hours; serious complaint inspections, initiate within 5 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. Oregon OSHA reports on its performance during quarterly meetings and annually in its SOAR; see Appendix E. Results were as follows:

- 100% (39/39) for imminent danger complaints.
- 92.6% (462/499) for serious hazard complaints.
- 98.8% (327/331) for other-than serious hazard complaints.
- 97.5% (516/529) for phone/fax investigations.

The state exceeded its criteria for acceptable performance in three of the four categories; only responsiveness to serious complaints fell below 95%. The overall average of 97.2% is consistent with previous years.

Timeliness of Complaints & Referrals	FY 2012	FY 2011	FY 2010	FY 2009	FY 2008
Imminent Danger	100% (39/39)	100% (37/37)	96.8% (30/31)	100% (43/43)	100% (37/37)
Serious	92.6% (462/499)	95.6% (475/497)	95.3% (346/363)	92.4% (378/409)	93.1% (376/404)
Other	98.8% (327/331)	99.1% (331/334)	99% (286/289)	96.5% (221/229)	97.4% (265/272)
Phone/fax	97.5% (516/529)	97.6% (534/547)	96.8% (448/463)	96.9% (372/384)	97.8% (441/451)
Average	96.1%	97.3%	96.9%	95.2%	96.1%

Oregon’s responsiveness to complaints is acceptable.

2. Fatalities and Catastrophes

OR-OSHA investigated 20 fatalities and one catastrophe in FY 2012, responding timely (within one day) in 20 out of 21 cases (95%). The untimely fatality response was due to an OR-OSHA manager making a decision not to investigate at the time. The central office later decided an investigation would be conducted. Oregon OSHA's performance is acceptable.

OR-OSHA contacted families of victims by mailing next of kin letters within 10 days 100% (20/20) following a fatality.

During OSHA's monitoring efforts in FY 2012, 13 of the 20 fatality case files were reviewed. This review was conducted due to national office guidance for such a review to occur in the previous fiscal year FAME period. It was determined that OSHA would review fatality case files as part of the FY 2012 FAME since the guidance came late in the period. These case files were well documented, and high severity citations were issued as appropriate.

3. Targeting and Programmed Inspections

In FY 2012, OR-OSHA conducted 2,268 programmed safety inspections and 380 programmed health inspections for a total of 2,648. The state cited serious, willful, or repeated violations in 40.48% of the programmed safety inspections and 52.11% of the programmed health inspections. The percentage of serious, willful, or repeat violations is lower than the 3-year national rate for state plans of 58.5% for safety and similar to the rate of 53.0% for health. OSHA will continue to monitor the state's performance in this area during FY 2013.

OR-OSHA conducted a total of 4,100 inspections during FY 2012, exceeding its inspection goal of 4,050 by 50 inspections, or 1.2%. The state established a reasonable inspection goal for FY 2012 based on staffing challenges and past performance. See table below.

Inspections	FY 2012	FY 2011	FY 2010	FY 2009	FY 2008
Goal	4050	5,200	5,500	5,500	5,000
Conducted	4100	4,587	5,261	5,534	5,248
Difference	50	(613)	(239)	34	248

OR-OSHA has always had very fast and effective mechanisms to obtain warrants when compliance officers were denied entry. There were seven denials during FY 2012, and warrants and/or reentry was obtained for all. OR-OSHA met this element.

4. Citations and Penalties

The state issues citations in a timely manner. The lapse time from opening conference to citation issuance for safety inspections in Oregon was 37.3 calendar days for FY 2012. This is better than the corresponding national average of 55.9 days, and is comparable to OR-OSHA's average of 37.1 days in FY 2011. For health inspections, OR-OSHA averaged 54.3 days from opening conference to citation issuance. This is better than the corresponding national average of

67.9 days, and a slight increase from 51.8 days in FY 2011 (SAMM 7). Both outcomes are acceptable.

The following tables represent OR-OSHA’s five-year performance history for both industrial hygiene and safety citation lapse times. The data was compiled using the end of year final SAMM report. See Appendix D for details.

IH Lapse Times (Days)	FY 2012	FY 2011	FY 2010	FY 2009	FY 2008
National Avg.	67.9	64.8	66	57.4	58.7
Actual	54.3	51.8	61.9	66.4	68.1
Difference	(13.6)	(13)	(4.1)	9	9.4

Safety Lapse Times (Days)	FY 2012	FY 2011	FY 2010	FY 2009	FY 2008
National Avg.	55.9	51.9	47.3	43.8	45.5
Actual	37.3	37.1	39	33.3	37
Difference	(18.6)	(14.8)	(8.3)	(10.5)	(8.5)

OR-OSHA’s rules and policies require that serious violations be assessed penalties. Oregon’s average initial penalty per serious violation in the private sector during FY 2012 was \$416.31. Oregon OSHA’s average serious violation penalty during FY 2011 was \$354, resulting in an increase of 18% (SAMM 10).

The following table presents OR-OSHA’s five-year average serious penalty issuance history:

Average penalty assessed per serious violation	FY 2012	FY 2011	FY 2010	FY 2009	FY 2008
	\$416	\$354	\$322	\$364	\$381

5. Abatement

OR-OSHA requires that each hazard be abated, and that adequate verification of the correction be included in the case file. OSHA’s review of 13 case files revealed adequate Hazard Abatement Letters (HAL), and supporting documentation in the case files. Additionally, OR-OSHA has a statute that requires employers to abate cited hazards during the appeals process. For FY 2012, the timely verification of abatement for serious, willful and repeat violations was 95.05% for private sector citations and 96.55% for public sector citations (SAMM 6). OR-OSHA performance in this element is acceptable.

Percent of S/W/R Violations verified	FY 2012	FY 2011	FY 2010	FY 2009	FY 2008
Private Sector	95.05%	94.76%	94.35%	93.84%	92.89%
Public Sector	96.55%	94.44%	98.82%	95.88%	97.87%

6. Employee and Union Involvement

During OR-OSHA's inspections, employees are given the opportunity to participate either through interviews or by having employee representatives accompany inspectors. Employees are also afforded the opportunity to privately express their views about the workplace away from the employer. Whenever enforcement staff were unable to involve employees in the inspection process, explanations were documented.

B. Review Procedures

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.

1. Informal Conferences

Oregon OSHA has similar informal conference procedures as OSHA, with the exception that the OR-OSHA appeals unit schedules the informal conference with the employer, and generally only the appeals officer and compliance officer attend. Employers have the right to discuss citations informally with OR-OSHA, the right to contest citations and penalties, and the right to object to assigned abatement dates. In Oregon, most employer citation appeals are resolved by informal settlement. No violations were vacated nor reclassified during informal review during this period (SIR C 7,8).

During case file reviews, any changes made to citation classification, deletions, or penalty reduction were well documented. OSHA did not identify any concerns, and finds this performance acceptable.

2. Formal Review of Citations

Oregon has a formal review process in place for employer's to appeal citations. In FY 2012, there were eight active cases before the Oregon Court of Appeals. Oregon OSHA withdrew the appeal in one case. In three cases where the employer requested appeal of the decision before the court, the court affirmed the ALJ decision - affirming the citation. One of the cases was affirmed by the court after Oregon OSHA appealed the ALJ decision. At the end of the fiscal year, there were three active cases before the court, two of which were appealed by Oregon OSHA and one was appealed by the employer. OSHA finds the actions in these eight cases acceptable.

C. Standards and Federal Program Changes (FPCs) Adoption

1. Standards Adoption

OR-OSHA has acceptable procedures for promulgating standards that are at least as effective as those issued by OSHA. During this evaluation period, OSHA issued one final rule that was required to be adopted by the states. The state adopted the Hazard Communication – Globally

Harmonized System within the required time period. Oregon continues to adopt Federal Standards within the required time frame.

2. Federal Program/State-Initiated Changes

A total of 7 federal program changes (FPCs) required a response in FY 2012. There were 2 remaining FPCs that will carry over into FY 2013. Oregon's response to those will be evaluated during the next FAME cycle. In all cases, OR-OSHA provided its intent of adoption, or to otherwise administer a program change that was at least as effective as the federal program change, in a timely manner.

OR-OSHA submitted 11 state-initiated changes this period. All state-initiated changes were submitted timely.

D. Variances

The state reported four variance actions during this evaluation period. No permanent variances were granted and four permanent variances were revoked because they were no longer needed. During the previous three years of reporting, OR-OSHA granted one permanent variance. No temporary variances were granted in the last three report years. The variance actions were handled properly and the decision to revoke the variances were justified.

E. Public Employee Program

In FY 2012, OR-OSHA conducted 3.71% (152/4100) inspections in the public sector (SAMM 11). The percent of inspections in the public sector is consistent with data for the state average of 3.4% over the last three years and is slightly lower than the 4.4% in FY 2011. Over the last five years the state has consistently conducted an acceptable number of inspections in the public sector.

Oregon imposes monetary penalties for public agencies similar to the penalties imposed to private employers.

F. Discrimination Program

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 following table is a summary of discrimination activity during FY 2012:

Disposition	Totals
Total Cases from FY 2012	118
Cases Completed FY 2012	116
Cases Completed Timely	76%
Overage Cases	29

Disposition	Totals
~ Withdrawn	5
~ Dismissed	97
~ Merit	14
~Settled	3
~Settled Other	1
~ Reinstatement (if any)	0
~ Litigated	5
Investigators on staff	15

During FY 2012, BOLI received 22 fewer complaints than in FY 2011 and completed 4 more investigations. BOLI's timeliness of completed cases has dropped from 88% in FY 2011 to 76% during this period. Although BOLI's merit rate was 12% compared to the national meritorious rate of 23%, BOLI's merit rate has nearly doubled since FY 2010.

OSHA conducted a comprehensive on-site monitoring review of Oregon's discrimination program in FY 2012 which resulted in several findings and recommendations for improvement to the whistleblower program. A summary of the FY 2012 findings and recommendations are discussed below and listed in Appendix A.

The cases reviewed were well organized; the Final Investigation Reports (FIRs) included timelines of events and case file activities. During the year, the state litigated five discrimination cases.

In FY 2010, OSHA recommended that BOLI accept 11(c) complaints in any form including orally without requiring notarized written complaints. The FY 2012 audit revealed that BOLI had revised this practice and mandated a change on June 13, 2012. The files reviewed during this audit period included those which were completed prior to June 13, 2012.

Additionally, BOLI used the date on the notification letter to the parties as the official investigation start date, which begins the 90-day period for the case to be completed. The official filing date of the complaint should be used to track timeliness and completion of the case, not the date of the letter of notification. This was discussed with OR-OSHA and BOLI at the time of the closing conference with the OSHA audit team.

In addition to the audit of the discrimination program in FY 2012, a Complaint About State Program Administration (CASPA) was filed and investigated, which also related to Oregon's Bureau of Labor and Industries (BOLI) discrimination section.

One allegation in this CASPA (O-192) was deemed valid by OSHA in which the complainant alleged that BOLI dismissed the complainant's discrimination complaint before the concurrent safety and health complaint investigation had been completed and also dismissed the discrimination case based on a lack of evidence to support a discrimination complaint. Two other allegations filed in this complaint about Oregon OSHA were considered to be invalid.

OSHA concurred with the state's response that OR-OSHA did not complete the safety and health investigation prior to BOLI's dismissal of the discrimination complaint. However, there is no requirement that the two complaints be investigated concurrently. Although this is the case, OSHA determined that BOLI may have misinterpreted the complainant's safety concerns as not constituting a protected activity. It was OSHA's opinion that the complaint was not well communicated by the complainant and understood by the state. In addition, OSHA concluded that the evidence in the case was not adequately tested for the following reasons:

- BOLI did not receive a response to the allegations from either of the respondents prior to closure of the case.
- There was incomplete documentation regarding interviews with the complainant.
- BOLI did not interview other employees or follow-up on information provided by the complainant in the Employment Discrimination Questionnaire, where appropriate.

As a result of the case file review and the CASPA, OSHA found six items for program improvement resulting in four recommendations and two observations. They are as follows:

Finding 12-1: BOLI considers the date of receipt of a signed complaint as the official filing date. During the audit, several case files were reviewed which included an additional date (i.e. the date of initial contact) as an alternative filing date. Documenting two potential filing dates in the file made it unclear which date was the official filing date which should be entered into IMIS.

Recommendation 12-1: Ensure the correct filing date is entered into IMIS.

Finding 12-2: Screened complaints reviewed during the audit did not include documentation or justification as to why they were screened out.

Recommendation 12-2: Prior to screening out a complaint, ensure that the complaint does not include elements of a prima facie complaint. Document the reason(s) for screening out such cases.

Finding 12-3: Screened complaints were not being entered into IMIS as appropriate under "create intake" function.

Recommendation 12-3: Ensure all screened complaints are entered into the IMIS "create intake" feature.

Finding 12-4: Two cases reviewed by OSHA were dismissed as "no merit," and both cases included documentation that the evidence had not been fully tested. Another case contained evidence that the case was not adequately tested in that BOLI did not interview other employees or follow-up on information provided by the complainant.

Recommendation 12-4: Ensure all evidence is adequately tested prior to dismissing or closing a case. Use appropriate justification for any closure and document in the case file accordingly.

These findings and recommendations are included in Appendix A for this period.

During the CASPA investigation, it was noted there was no indication or documentation in the case file that BOLI conducted an investigative interview of the complainant. The complainant questioned the right to a procedural interview after BOLI's closure of the case. Additionally, no response to the allegations of discrimination was received from the respondent prior to BOLI's closure of the case.

Although the above concerns resulted in recommendations to the state in the CASPA investigation, after which the state took appropriate corrective action, these issues were not found in other case files reviewed. OSHA has identified these concerns as observations and will continue to monitor these issues in FY 2013.

Observation 12-1: Ensure the initial interview with a complainant is completed to include obtaining a thorough understanding of the complainant's protected activity.

Observation 12-2: Ensure proper correspondence is provided to and received from respondents prior to making a final determination.

These observations are included in Appendix B.

G. Voluntary Compliance Program

In addition to the 100% state funded consultation program and the 21(d) consultation program, OR-OSHA has a Voluntary Protection Program (VPP) and a Safety and Health Achievement Recognition Program (SHARP) that recognizes and encourages employers with exemplary safety and health programs. At the end of FY 2012, Oregon had 26 VPP sites. In the same period, there were 63 current SHARP participants, 94 graduates, and four employers receiving initial SHARP certification for a total of 160 employers.

Oregon OSHA continues to form collaborative relationships with industry groups in targeted industry sectors as well as make full use of advisory stakeholder groups to assist in rulemaking resulting from legislative activity. At the end of FY 2012, OR-OSHA had 27 active partnerships and had developed 3 alliances.

H. Program Administration

OR-OSHA provided 24 hours of safety and health training to 91 percent of its professional staff, thereby exceeding the fiscal year goal of 90 percent. A variety of staff development sessions were presented at an all-staff symposium, providing a significant portion of the staff training hours. Additional webinars and e-learning opportunities were made available for continued professional staff development.

Oregon's safety enforcement benchmark is 47 with 48 positions identified. At the end of FY 2012, there were 37 positions filled. For health enforcement, both the benchmark and positions identified were 28 of which 23 were filled.

Oregon has 27 consultation positions (17 safety and 10 health consultants); 4 are funded under 21(d) and 23 are 100% state-funded. As of September 30, 26 state-funded consultation positions (16 safety and 10 health) were filled.

V. State Progress in Achieving Annual Performance Goals

OR-OSHA has established three broad goals in its five-year Strategic Plan which covers the years 2011-2015 as follows:

Strategic Plan Goals

Strategic Goal 1: Reduce serious workplace injuries and the risks that lead to them.

Strategic Goal 2: Reduce serious workplace illnesses and the risks that lead to them.

Strategic Goal 3: Reduce workplace deaths and the risks that lead to them.

During FY 2012, OSHA did not identify any issues or concerns regarding Oregon's progress toward its Strategic Performance Goals.

OR-OSHA developed and submitted its FY 2012 annual performance plan in support of its strategic plan as part of its application for federal funds. OSHA did not identify any issues or concerns regarding Oregon's performance in meeting its annual performance goals. All goals were met and were deemed acceptable.

VI. Other Areas of Note

Complaints About State Plan Administration (CASPA)

One CASPA was filed in FY 2012. Two of the three allegations in this CASPA were deemed invalid. One allegation filed in this complaint and related to Oregon's discrimination program is summarized in *Section IV.F. - Discrimination Program* of the FAME report. Two CASPAs remained open from the previous fiscal year and were completed in early FY 2012. These were summarized in the previous FAME report.

APPENDIX A – New and Continued Findings and Recommendations

FY 2012 Oregon State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
12-1	BOLI considers the date of receipt of a signed complaint as the official filing date. During the audit, several case files were reviewed which included an additional date (i.e., the date of initial contact) as an alternative filing date. Documenting two potential filing dates in the file made it unclear which date was the official filing date which should be entered into IMIS.	Ensure the correct filing date is entered into IMIS.	N/A
12-2	Screened complaints reviewed during the audit did not include documentation or justification as to why they were screened out.	Prior to screening out a complaint, ensure that the complaint does not include elements of a prima facie complaint. Document the reason(s) for screening out such cases.	N/A
12-3	Screened complaints were not being entered into IMIS as appropriate under “create intake” function.	Ensure all screened complaints are entered into the IMIS “create intake” feature.	N/A
12-4	Two cases reviewed by OSHA were dismissed as “no merit” and both cases included documentation that the evidence had not been fully tested. Another case contained evidence that the case was not adequately tested in that BOLI did not interview other employees or follow-up on information provided by the complainant.	Ensure all evidence is adequately tested prior to dismissing or closing a case. Use appropriate justification for any closure and document in the case file accordingly.	N/A

APPENDIX B – Observations Subject to Continued Monitoring

FY 2012 Oregon State Plan Abridged FAME Report

Rec # [OB-1]	Observations	Federal Monitoring Plan	FY 11#
12-1	Ensure the initial interview with a complainant is completed to include obtaining a thorough understanding of the complainant's protected activity.	OSHA will further address this item with OR-OSHA and BOLI through additional monitoring of the discrimination program in FY 2013.	
12-2	Ensure proper correspondence is provided to and received from respondents prior to making a final determination.	OSHA will further address this item with OR-OSHA and BOLI through additional monitoring of the discrimination program in FY 2013.	

APPENDIX C – Status of FY 2011 Findings and Recommendations
 FY 2012 Oregon State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-1	OR-OSHA did not meet its inspection goals. OR-OSHA conducted 4,588 inspections during FY 2011. That was fewer than OR-OSHA’s goal of 5,200 by 612 inspections, or 12% fewer than the established goal. The state was affected by a high vacancy rate for enforcement staff during this period, which impacted their ability to reach their inspection goal.	Ensure appropriate inspection goals are set based on realistic expectations in consideration of current resources, abilities and training status of compliance staff, and properly allocated in order to achieve goals.	We took steps to make the FY 2012 goals more realistic, based on expected staffing and productivity. We also are filling positions, which will enable our FY 2013 goals to more closely approximate our historic levels.	The state completed the corrective actions as stated in the plan. Region verification completed at end of FY 2012; Oregon exceeded inspection goal of 4,050 by 50 inspections (4,100). More realistic inspection goals were determined and submitted with the grant application and approved for FY2013.	Completed.
11-2	A significant disparity between OSHA’s average gravity-based penalty and OR-OSHA’s continues to be present.	Revise penalty policies in order to encourage employer voluntary compliance and to serve as a strong deterrent. Make policy adjustments to raise penalty averages for serious violations.	We have completed our rulemaking to improve penalty effectiveness, primarily by better encouraging desired employer behavior, better reflecting the size of the employer, and focusing on those violations most likely to cause the death of a worker. As we indicated in response to the finding, we did not set out to increase the average first-time serious penalty, and we do not think that indicator is a particularly strong measure of the deterrent effect of our enforcement activity.	The state completed its actions in relation to this issue and does not anticipate further action. Region verification completed at end of FY 2012; Oregon data for S/W/R penalties increased by 18% from previous year.	Completed.

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-3	Violations were issued as other than serious where a serious and/or repeat classification would have been more appropriate.	Ensure the appropriate violation classification is determined for the severity and probability of the hazard when warranted.	We are reinforcing appropriate classification, especially in relation to agriculture (the source of the finding). We will focus our internal audit activities during the coming federal fiscal year on violation classification (as well as appropriate application of the new penalty rules).	<p>The state's corrective action has been verified by OSHA during an on-site case file review during FY 2012.</p> <p>Region will continue monitoring through quarterly meeting discussions with Oregon in FY 2013.</p> <p>Additionally, a focused audit is scheduled for completion by Oregon during FY 2013.</p>	Completed.

APPENDIX D – FY 2012 State Activity Mandated Measures (SAMM) Report

FY 2012 Oregon State Plan Abridged FAME Report

State: OREGON RID: 1054100

NOV 09, 2012

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	4065 4.67 870	348 4.76 73	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	2099 3.99 526	765 10.47 73	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	846 97.92 864	78 100.00 78	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	62 100.00 62	7 87.50 8	100%
5. Number of Denials where entry not obtained	1	0	0
6. Percent of S/W/R Violations verified			
Private	2268 95.05 2386	58 57.43 101	100%
Public	56 96.55 58	0 0	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	83175 37.26 2232	10173 44.23 230	2032800 55.9 36336
Health	34888 54.25 643	4519 59.46 76	647235 67.9 9527

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	918	95	76860
Safety	40.48 2268	48.72 195	58.5 131301
			National Data (3 years)
Health	198 52.11 380	21 45.65 46	9901 53.0 18679
			National Data (3 years)
9. Average Violations per Inspection with Violations			
S/W/R	3170 1.10 2875	380 1.24 306	367338 2.1 175950
			National Data (3 years)
Other	4292 1.49 2875	450 1.47 306	216389 1.2 175950
			National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	1241857 416.31 2983	139735 395.84 353	624678547 1990.5 313826
			National Data (3 years)
11. Percent of Total Inspections in Public Sector	152 3.71 4100	3 1.01 297	476 3.4 13972
			Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	24493 74.90 327	1043 52.15 20	3197720 187.0 17104
			National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days*	88 75.86 116	11 68.75 16	100%
14. Percent of 11c Complaints that are Meritorious*	14 12.07 116	3 18.75 16	1619 23.4 6921
			National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled*	4 28.57 14	1 33.33 3	1444 89.2 1619
			National Data (3 years)

*Note: Discrimination measures have been updated with data from SAMM reports run on 1/3/2013

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

APPENDIX E – State OSHA Annual Report (SOAR)
FY 2012 Oregon State Plan Abridged FAME Report

[Available Upon Request]