

# **FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

Oregon Department of Consumer and Business Services  
Occupational Safety and Health Division  
(Oregon OSHA)



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## I. Executive Summary

The purpose of this report is to assess the activities of the Oregon Occupational Safety and Health Division (Oregon OSHA) for Fiscal Year (FY) 2021 with regard to activities mandated by the Occupational Safety and Health Administration (OSHA) and to gauge the State Plan's progress in resolving an outstanding finding and observations from the previous Federal Annual Monitoring Evaluation (FAME) Report.

Oregon OSHA was again challenged with the impact of the Coronavirus Disease 2019 (COVID-19) pandemic. The State Plan quickly responded and effectively implemented protective protocols for its personnel, issued several emergency temporary rules in 2020, followed by two different permanent COVID-19 rules on May 4, 2021 and again on December 21, 2021. This included a continual rulemaking process to adapt to the quickly changing environment as the pandemic progressed and required continual updates to the supplemental resource material for employers to understand the compliance expectations. Additionally, Oregon OSHA was responsible for enforcing the Governor's quickly evolving COVID-19 mandates throughout the pandemic. Oregon OSHA accomplished this while responding to 12,153 complaints in FY2021, which included a 35-45% increase in non-COVID-19 complaints. Oregon OSHA enforcement and consultation staff were fully engaged in complaint processing, including contacting employers and informing them of their responsibilities and rule requirements, contacting complainants and discussing rule requirements, and evaluating employer complaint responses.

Oregon OSHA maintained a high level of program performance during the review period despite challenges related to the COVID-19 pandemic. The State Plan had an excellent training program for its staff, and maintained high staffing levels, even while experiencing increased turnover and difficulty hiring in recent years. It had a comprehensive system for scheduling programmed inspections, and was timely in response to complaints, referrals, and reports of fatalities. The State Plan had an average lapse time of 46 days for both safety and health cases for issuing citations, both better than the national average, and maintained high levels of worker and union involvement during inspections.

One finding and one observation from FY 2020 were completed or closed. The FY 2021 Comprehensive FAME Report on Oregon OSHA includes one new finding, eight new observations and two continued observations. Appendix A describes the new finding and recommendation. Appendix B describes observations subject to new and continued monitoring and the related federal monitoring plans. Appendix C describes the status of the one previous finding with associated completed corrective actions.

## II. State Plan Background

### A. Background

The State of Oregon, under an agreement with OSHA, operates an occupational safety and health program through the Oregon Consumer and Business Services Department, Occupational Safety and Health Division (Oregon OSHA). The Oregon State Plan received initial approval on December 28, 1972 and was certified on September 24, 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. The temporary labor camp standard has been revised by Oregon OSHA to meet federal concerns. Oregon OSHA has requested that the limitation on its final approval be removed. The Agricultural Labor Housing standard is currently being prepared for publishing in the Federal Register for public review. Final approval is a significant achievement, confirming that the

operation of Oregon OSHA's program is at least as effective as the federal program. The Administrator of Oregon OSHA is appointed by the director of the Oregon Consumer and Business Services Department and serves as the designee for the State Plan. The previous Administrator, Michael Wood, resigned his position and stepped down on October 22, 2021. Julie Love was the Acting Administrator for the remainder of FY 2021 following the departure of Mr. Wood. The current interim Administrator for Oregon OSHA is Lou Savage.

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 workplace retaliation. Rules pertaining to the processing of these complaints, also known as whistleblower protection complaints, are contained in Division 438 of Oregon's Administrative Rules. Oregon OSHA reimburses BOLI for costs associated with conducting retaliation investigations.

Oregon OSHA exercises jurisdiction over state and local government workplaces and private sector employers not covered by federal OSHA. OSHA's inspection authority is limited to federal agencies, the United States (U.S.) Postal Service, contractors on U.S. military reservations, private sector 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 2021, funds were allocated for 85 compliance officers, 30 consultants that were 100% state-funded, and four additional consultants who provided private sector consultation under Section 21(d) of the Occupational Safety and Health Act (OSH Act) of 1970. The Oregon OSHA staffing levels were again impacted by challenges in hiring and training enforcement officers with a more than 12% vacancy factor in these positions. According to the demographic profile provided in the FY 2021 grant application (run date 5/5/2020), there were an estimated 1,972,500 workers in Oregon covered by workers' compensation insurance, working for about 125,800 employers. It should be noted that this is a lagging indicator based on data from 2019 and does not reflect the negative impact of COVID on the local economy. In FY 2021, the federally approved state OSHA program was funded at \$26,733,570. The state matched the initial federal base award of \$5,528,400. The federal base award was increased by \$72,000 in April. A one-time only award of \$713,549 in July and another one-time only award of \$155,857 in September contributed to the total federal grant of \$6,469,806. The state matched the total federal grant of \$6,469,806 and added an additional \$13,793,958 in 100% state funds. The state reported final expenditures to be \$29,909,327 (\$6,469,806 federal, \$6,469,806 state match, and \$16,969,715 in 100% state funds). In August, the state was awarded an ARPA 23(g) grant, covering October 2021 through September 2023. The award amount is \$5,800,000 (\$2,900,000 ARPA funds and \$2,900,000 state match).

## **B. New Issues**

Oregon OSHA experienced staff losses in significant roles in its program. Oregon OSHA's Administrator, Michael Wood, stepped down from his position on October 22, 2021. Oregon OSHA's longtime Consultation Manager, Roy Kroker, unexpectedly passed away. This loss was not only devastating to the Oregon OSHA Consultation program, but to the Portland Area Office staff that worked so closely with him for many years. Oregon OSHA has responded admirably to overcome these losses.

Oregon OSHA completed an update to its Agricultural Labor Housing Rule which was reviewed and approved by both OSHA and WHD. This approval was transmitted to OSHA's national office for

inclusion in the Federal Register for removal of the exemption on Oregon OSHA's final approval. Once completed, Oregon OSHA will have the status of final approval with no exceptions.

Oregon OSHA had one CASPA that was related to a complainant's rebuttal to a non-formal complaint response. The CASPA was investigated and resolved.

### III. Assessment of State Plan Progress and Performance

#### A. Data and Methodology

OSHA established a two-year cycle for the FAME process. The FY 2021 report is a comprehensive year report where OSHA conducted an on-site program evaluation and case file reviews. The enforcement case file review was conducted at the Salem Central Office during the week of December 13, 2021. The retaliation case file review was conducted at the Salem Field Office, with a two-person team during the week of January 10, 2022. The review of state and local government consultation files was conducted by a two-person team at the Salem Field Office during the week of August 9, 2021.

The enforcement case files were randomly selected from a list generated from data in the OSHA Information System (OIS). A total of 147 safety, health, and consultation files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2020 through September 30, 2021). All fatality investigations were selected. The selected population included:

- Twenty-six (26) fatality case files
- Forty (40) programed case files
- Sixty (60) un-programed case files
- Twenty-one (21) state and local government consultation visit files

A total of 120 retaliation investigations were completed and no complaints were administratively closed in FY 2021. The percentage that each category comprised of the total completed cases was determined and applied to the sample size. A total of 100 closed retaliation case files were selected as follows:

- Seven (7) withdrawn
- Eighty-five (85) dismissed
- Seven (7) referred for litigation
- One (1) settled Other

A total of 118 consultation visits were conducted in state and local government in FY 2021. OSHA reviewed 21 of these files.

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

- State Activity Mandated Measures (Appendix D, dated 12/8/2021)
- Mandated Activities Report for Consultation (MARC, dated 12/14/2021)
- State Information Report (SIR, dated 11/8/2021)
- State OSHA Annual Report ([SOAR](#)):
- Oregon OSHA Annual Performance Plan

- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Web Integrated Management Information System (WebIMIS)
- Full case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) that can be either a single number, or a range of numbers above and below the national average. SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the FY 2021 SAMM report and includes the FRL for each measure.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

#### a) Training

A total of 377 different courses were offered to the safety and health staff with 81% (96/118) of them receiving at least 48 hours of training in FY 2021. Training opportunities were offered to all professional staff, whenever possible, through webinars, e-learning, and participation in local courses and conferences. Basic training was provided for new workers through the internal training program and follows the approved training directive, SOP 13 Required Initial Training for Compliance Staff, which was determined to be equivalent to OSHA's TED 01-00-019 on June 13, 2016.

#### b) OSHA Information System (OIS)

Oregon's OSHA Technical Information System (OTIS) interfaces with OIS. There have been a few issues with data not transferring correctly into OIS, such as SAMM Measures 1 and 2, but not to an extent that materially impacts monitoring of the state program. Where there are differences in data between the SAMM report and information from OTIS, such as the SOAR, these differences are explained in this report. Some differences are minor and are due to the data being generated on different dates.

BOLI maintains its own information system to track and log retaliation investigations. Every Monday, BOLI sends a list of newly opened retaliation cases from the prior week to the Oregon OSHA contact for input into WebIMIS. In addition, as the retaliation cases are closed, BOLI updates the Oregon OSHA contact who then closes the case in WebIMIS.

#### c) State Internal Evaluation Program Report

A sample of 30% of all case files is reviewed. However, this is not done in a systematic approach in accordance with a written policy. The State Plan finalized its SIEP methodology on 12/11/2021 and is planning on conducting its first evaluation in March of 2022.

#### d) Staffing

In the FY 2021 grant application, Oregon OSHA allocated funds for 85 compliance officers. However, according to information in the FY 2022 23(g) grant application, as of July 1, 2021, Oregon OSHA had 72.1 FTE of compliance officers on board (45.75 FTE safety and 26.35 FTE health). In the FY 2021 grant application, the state listed eighteen safety and twelve health consultants who conduct both private sector and state and local government consultations. The private sector work is 100% state funded and is not covered under the state plan; however, the

state and local government consultation work is funded under the 23(g) grant. In the FY 2021 grant application, Oregon OSHA projected that 2.88 FTE safety and 1.92 FTE health consultants would conduct federally funded work in state and local government under the 23(g) grant.

## 2. ENFORCEMENT

### a) Complaints

According to SAMM 1a, there were 682 complaint inspections in FY 2021. The average number of days to initiate a complaint inspection (state formula) was 14.38 days. There were 10,712 complaint investigations according to SAMM 2a, and the average number of work days to initiate the investigation (state formula) was 4.58 days. Complaint responses were tracked using a four-tiered system.

The four tiers are as follows:

- Imminent danger complaint inspections must be initiated within 24 hours in 95% of cases
- Serious complaint inspections must be initiated within five working days in 95% of cases
- Other-than-serious complaint inspections must be initiated within 30 working days in 95% of cases
- Phone/fax, letter response must be initiated within 10 working days in 90% of cases.

The FY 2021 SOAR reported the results, when separated by complaint type, as percent of timely responses as follows:

- 100% (26/26) for imminent danger complaints and referrals
- 96.8% (582/601) for serious hazard complaints
- 97.5% (347/356) for other-than-serious hazard complaints
- 90.5% (10,131/11,196) for phone fax, letter investigations

The goals for timely response for imminent danger, serious, and other-than serious hazard complaints, and timely initiation of phone/fax, letter investigation responses were all met. According to SAMM 3, the response to imminent danger complaint and referral situations was within one day in 100% (19 out of 19) of cases.

There were three denials of entry where entry was not obtained (SAMM 4). One was a COVID related inspection that was opened via phone. The employer was not responsive, so Oregon OSHA pursued a subpoena. Attempts to serve the subpoena were unsuccessful so Oregon OSHA referred the issue to the state Department of Justice. The employer was found in contempt of court and daily penalties were assessed and legal fees were ordered. The second and third were COVID related inspections. After the initial denial, compliance officers returned with warrants, but determined that there was no jurisdiction due to lack of employees and closed the issue as no inspection.

### b) Fatalities

The review of 26 fatality inspection case files found well-documented investigations that explained the events leading to the incident. The documentation supported the findings and citations where appropriate. Initial letters to the family and follow-up letters were provided. The standard procedure to interview the victims' families to give them the opportunity to discuss the circumstances of the injuries and/or illness was followed and documented.

Some fatalities did not result in an inspection because they were due to natural causes or were not in the jurisdiction of Oregon OSHA. When a motor vehicle accident results in the death of an employee, Oregon OSHA waits for law enforcement to complete their investigation and then makes a determination as to whether they should investigate the incident.

Of the 54 fatality investigations conducted, 79.63% (43 out of the 54) were responded to within one day (SAMM 10). The FRL to open fatality investigations within one workday of receiving notification is 100%. Of the ten outliers, four were related to active COVID outbreaks, two were related to motor vehicle accidents, three were untimely responses or referrals, and one was for an employer that was no longer in business. These outliers were reviewed through quarterly meetings. All of the 26 fatality casefiles reviewed were initiated timely or satisfactorily explained. OSHA will continue reviewing fatalities during quarterly meetings.

#### c) Targeting and Programmed Inspection

Percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted compared to the number of employer establishments in the state. The State Plan had a percent enforcement presence of 1.35%, which was above the FRL range of 0.74% to 1.24%. The high enforcement presence indicates that the State Plan is reaching more employers with enforcement activity than the national average.

A total of 1,288 inspections were conducted: 930 safety and 358 health inspections. This is only 36.1% of the annual performance goal of 3570. The safety inspections were 64% below the low end of the FRL range of 2,584 to 2,856 and health inspections were 56% below the low end of the FRL range of 807.50 to 892.50 (SAMM 7). Oregon OSHA's performance on meeting its inspection goal has been tracked as an observation (**Observation FY 2020-OB-01**) for the past three years. The state reduced the inspection goal from 4,300 inspections to 3,570 inspections in FY 2021; however, the goal is still not being met by a significant margin; therefore, this observation was elevated to a finding in FY 2021.

#### **Finding FY 2021-01 (FY 2020-OB-01):**

Oregon OSHA conducted 930 of 2,720 (34%) safety and 358 of 850 (42%) health inspections (SAMM 7), both below the further review level. This is following the state reducing the goal from 4,300 inspections to 3,570 inspections.

#### **Recommendation:**

Oregon OSHA should evaluate the level of the SAMM 7 goal and whether or not it is achievable. This goal has not been met for the past three years. If Oregon OSHA determines that the goal is achievable, then they should develop a plan to ensure that they meet this goal. OSHA will continue to evaluate Oregon OSHA's planned versus actual inspections on a quarterly basis.

The in-compliance rate was 39.01% for safety inspections, which was slightly above the FRL range of 25.32% to 37.98% (SAMM 9). This activity measure was monitored throughout the year and improved as the year went on. Though it is out of range, it is not a concern at this time and will be monitored closely over FY 2022. The in-compliance rate for health inspections was 43.64%, which is within the FRL of 32.51% to 48.77%, and is not a concern.

The average number of serious/willful/repeat/unclassified violations per inspection was 1.39 for FY 2021, which was 0.03 below the FRL range of 1.42 to 2.14 for this metric (SAMM 5). The



average number of other than serious violations per inspection was 0.69, which was also below the FRL range of 0.73 to 1.09. This will be tracked as a new observation in FY 2021.

**Observation FY 2021-OB-01:**

The average violations per inspection for both SWRU and other-than-serious were both below the FRL.

**Federal Monitoring Plan FY 2021-OB-01:**

OSHA will conduct a limited file review and will closely monitor this activity measure in FY 2022 to ensure that Oregon OSHA makes the modest improvement in this area to be within range of the FRL.

OSHA evaluated 126 inspection casefiles to evaluate the status of **Observation FY-2020-OB-02**, failure to collect 300 data. OSHA found 25 of 126 (20%) of files where the OSHA 300 logs were not included in the file. Oregon OSHA's review of the files from the FAME review database found 6 of 31 (19%) of inspections that did not include the 300 log when it should have been obtained, which compared to what OSHA found was six of 126 (5%) of files. The casefile review revealed no negative trends and the observation was closed.

d) Citations and Penalties

A review of Oregon OSHA's enforcement case files found that there was adequate evidence provided to support violations, and citations were issued for all apparent violations.

**PENALTY TABLE**

The FRLs for average penalty are based on +/-25% of the three-year national average. The average serious penalty for all employers (1-250+ workers) was \$620.02, which was \$1,705 below the FRL range of \$2,325.28 to \$3,875.46 in FY 2021 (SAMM 8). Of most concern was the assessed penalties for larger employers. For private sector employers with 101-250 workers, the average serious penalty issued was \$584.71, which was \$3405 below the FRL range of \$3,990.12 to \$6,650.20 (SAMM 8c). For private sector employers with more than 250 workers, the average serious penalty issued was \$1,301.67, which was \$3630 below the FRL range of \$4,931.78 to \$8,219.63 (SAMM 8d). In FY 2017, legislation was passed that gave Oregon OSHA the authority to modify its penalties. On December 22, 2017, Administrative Order 8-2017, raising both minimum and maximum penalties for alleged violations, was adopted. However, the average penalty amounts assessed have stayed below the FRL. This is a new observation in FY 2021.

**Observation FY 2021-OB-02:** Oregon OSHA's penalties are significantly below the national average and FRL for all categories of employer.

**Federal Monitoring Plan FY 2021-OB-02:** OSHA will monitor this over FY 2022 and will evaluate in a focused case file review at the conclusion of the FY.

Table A shows the average current penalty per serious violation based on the number of workers controlled by an establishment and summarizes the State Plan's average penalties compared to the three-year national average and the FRL.

**Table A**  
**Average Serious Penalty by Employer Size**

<b>Number of Workers</b>	<b>Oregon OSHA FY 2021</b>	<b>Three-Year National Average</b>	<b>FRL (Plus or Minus 25% of the three-year national average)</b>
<b>1-250+</b>	\$620.02	\$3,100.37	\$2,325.28 to \$3,875.46
<b>1-25</b>	\$521.00	\$2,030.66	\$1,523.00 to \$2,538.33
<b>26-100</b>	\$782.23	\$3,632.26	\$2,724.20 to \$4,540.33
<b>101-250</b>	\$584.71	\$5,320.16	\$3,990.12 to \$6,650.20
<b>250+</b>	\$1,301.67	\$6,575.70	\$4,931.78 to \$8,219.63

e) Abatement

Each hazard must be abated and adequate verification of the correction must be included in case files. A review of 126 inspection case files revealed that adequate hazard abatement letters and supporting documentation were included in the case files. The lapse time for safety inspections was 46.47, which was within the FRL of 41.94 to 62.90 work days (SAMM 11a). The health inspection lapse time was 46.69, which was below the lower end of the FRL of 52.88 to 79.32 work days (SAMM 11b). This was positive performance on this metric, as a shorter lapse time helps ensure that serious hazards are abated as timely as possible.

f) Worker and Union Involvement

In 100% of initial inspections, a worker representative participated in the walk around inspection and/or the compliance officer conducted and documented worker interviews (SAMM 13). The case file review noted that of 11.9% of sites (15 out of 126) were unionized. One out of the fifteen case files noted the union representative being present during the walk around and opening conference. In reviewing the files, it was not always clear on why the union was not involved in the inspection onsite activity; therefore, this is a new observation in FY 2021. It is important to note that onsite activity was limited throughout the year due to the health risk of spreading COVID-19. In some instances, there was a heightened risk to Oregon OSHA staff from aggressive or threatening behavior from employers and the public. With these situations, the compliance officers often had to interview over the phone and in some cases, the employer refused to return phone messages and provide employee contact information. These additional challenges made involving a union even more difficult for compliance officers.

**Observation FY 2021-OB-03:** In FY 2021, in 14 of 15 (93%) inspections where workers were unionized, the union did not participate in the inspection, and the lack of involvement was not adequately explained in the file.

**Federal Monitoring Plan:** OSHA will conduct a limited file review during the next comprehensive FAME

The identity of employees interviewed or who otherwise participated in protected activities was not withheld under the informant privilege provided in Chapter 3 of Oregon OSHA's Field Inspection Reference Manual (FIRM) corresponding to Chapter 3, Section VII, I, 5c of OSHA's Field Operations Manual (FOM). The ability to interview employees privately is a protection afforded by the OSH Act in Section 8, paragraph A(2) and the corresponding provision of the Oregon Safe Employment Act under 654.067(b). The only employees who are afforded anonymity by Oregon OSHA are complainants. This has the potential to expose employees who participate in enforcement inspections to retaliation, and to have a chilling effect in their willingness to freely answer questions. More concerning is that un-redacted enforcement case files are given to employers, upon request, prior to appeal proceedings. Oregon public records law ORS 192.314(1) states that "every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided" by specific exemptions. The Oregon public records law, or current interpretation of the law, prohibits Oregon OSHA from protecting information that should be confidential. This is a concern, therefore, **Observation FY 2020-OB-03** will be continued.

**Observation FY 2021-OB-04 (FY 2020-OB-03)**

The confidentiality of employees interviewed during inspections was not ensured during the appeal process.

**Federal Monitoring Plan:**

OSHA will monitor the State Plan to determine Oregon OSHA's ability to protect the identities of employees who participate in enforcement activities.

### 3. REVIEW PROCEDURES

a) Informal Conferences

Per Oregon Revised Statute (ORS) 654.078, an employer is given 30 days in which to file a written appeal of a citation notice. Untimely appeals are forwarded to the Oregon Workers' Compensation Board and Oregon Department of Justice. The informal conference occurs after the notice of appeal.

If an employer appeals a serious violation or the reasonableness of an abatement date issued, the abatement date is not automatically extended. When an employer does not apply for an extension, they must correct all serious violations within the assigned period pending appeal. The abatement period for other-than-serious violations does not begin until all appealed items become a final order.

The retention rate for penalties was 97.51% (SAMM 12), significantly exceeding the upper end of the FRL of 58.72% to 79.44%. The enforcement case file review did not reveal any issues or deficiencies related to informal proceedings.

b) Formal Review of Citations

For FY 2021, 0% of violations were vacated after a contest was filed, below the national average of 18% (SIR 5B), and 0% of violations were reclassified after the contest, below or above the national average of 20% (SIR 6B). The penalty retention rate following a contest was 12.47% versus the national average of 63% (SIR 7B). The enforcement case file review did not reveal any issues or deficiencies related to formal settlement proceedings.

The contested case process in Oregon differs than the federal process in a number of ways. In Oregon, the employer has 30 days to contest a citation in writing, and at that time the employer has the option of participating in an informal conference which allows for an open dialog and opportunity for a settlement discussion with Oregon OSHA. The employer can also choose to move directly to a Worker's Compensation Board (WCB), which is in front of an Administrative Law Judge (ALJ) and Oregon OSHA is represented by the Department of Justice (DOJ). Up until the hearing, Oregon OSHA can enter into a settlement agreement with the employer. At the conclusion of the hearing, the ALJ issues an opinion and order which either side can appeal to the appellate court.

#### **4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION**

##### **a) Standards Adoption**

The rulemaking process is initiated based on one or more of the following: a federal rule requiring State Plan response is promulgated, the State Plan determines an update to an existing rule is needed, the state legislature directs rulemaking, in response to public petitions, or Oregon OSHA staff has indicated a need. The second step is the comparison of the new/updated proposed rule to existing rules and consensus standards by the Oregon OSHA Technical Section. They research technical feasibility, review the fiscal impact of the rule, and form advisory committees, as needed. The opportunity is given to Oregon OSHA staff to provide comments prior to filing of a Notice of Proposal with the Secretary of State for printing in the Oregon Bulletin. At least 20 days are allowed for public comment. Notices are sent to affected parties and legislators, including information on hearings, if scheduled. An opportunity is provided for stakeholders and Oregon OSHA staff to make comments. Finally, there is a Hearing on Final Rule adoption. In most cases, at least one hearing is scheduled and often there are multiple public hearings. An opportunity is provided for stakeholders and Oregon OSHA staff to make comments at the public hearings or through written comment. Finally, there is a Notice filed with the Secretary of State on Final Rule adoption.

A notice of intent was received timely for five of seven standards that required an intent response in FY 2020 and 2021. The two intent responses that weren't timely were late by only a couple of weeks, which does not rise to the level of an observation. All five standards that required adoption during the time period have been adopted. While technically the standards for penalty increases and the COVID-19 ETS were not adopted timely, Oregon OSHA had at least as effective rules in place in the interim and this was not a concern. (Table B). The following table lists the standards that required adoption and/or and intent response during the time period.

**Table B**  
**Status of FY 2020 and FY 2021 Federal Standards Adoption**

<b>Standard</b>	<b>Response Due Date</b>	<b>State Plan Response Date</b>	<b>Intent to Adopt</b>	<b>Adopt Identical</b>	<b>Adoption Due Date</b>	<b>State Plan Adoption Date</b>
<b><i>Adoption Required</i></b>						
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	3/11/2020	Yes	No	7/15/2020	11/1/2021
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	9/9/2020	Yes	Yes	1/14/2021	Adopted 7/31/2017, effective 3/12/2018
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	10/30/2020	Yes	Yes	2/27/2021	Adopted 7/7/2017, effective 3/12/2018
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	3/30/2021	Yes	No	7/14/2021	Adopted 11/1/2021; Effective 12/1/2021
Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/12/2021	Yes	No	7/21/2021	9/14/2021
<b><i>Adoption Encouraged</i></b>						
Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	9/28/2020	No	No	n/a adoption not required	n/a
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (9/15/2020)	11/14/2020	11/2/2020	Yes	Yes	n/a adoption not required	6/2/2021

**b) Federal Program Change (FPC) Adoption**

In FY 2020 and FY 2021, Oregon OSHA provided an intent response timely for 12 of 13 (92%) of FPCs, and the late intent response was only late by one day. Two (2) of 2 FPCS that required identical adoption were adopted within six months of federal promulgation (Table C). Four (4) of seven FPCs that required equivalency were not adopted timely, and one of seven requiring equivalency was adopted, but the plan change supplement has not been provided. Timely adoption of FPCs will be a new observation in FY 2021.

**Observation FY 2021-OB-05:** Oregon OSHA did adopt federal program changes timely.

**Federal Monitoring Plan:** OSHA will continue to track Oregon OSHA’s progress on adoption of federal program changes and will discuss the status during quarterly meetings.

**Table C**  
**Status of FY 2020 and FY 2021 Federal Program Change (FPC) Adoption**

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i><b>Adoption Required</b></i>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/4/2020	Yes	No	6/10/2020	6/1/2020
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	2/10/2020	Yes	No	8/4/2020	10/17/2008
<i><b>Equivalency Required</b></i>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	6/9/2020	Yes	No	10/11/2020	Pending Adoption
Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	8/24/2020	Yes	No	12/22/2020	Pending Adoption
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	12/28/2020	No	n/a	6/12/2021	Pending Adoption
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	3/25/2021	Yes	No	9/19/2021	8/24/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	7/12/2021	Yes	No	7/28/2021	9/14/2021
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/13/2021	Yes	No	12/28/2021	Pending Adoption
Revised National Emphasis Program - Coronavirus Disease 2019	7/22/2021	7/12/2021	Yes	No	8/7/2021	Adopted 11/16/2020,

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
(COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)						pending plan change supplement
<i>Adoption Encouraged</i>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	2/10/2020	Yes	No	n/a adoption not required	7/30/2020
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	8/7/2020	No	n/a	n/a adoption not required	n/a
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	5/13/2021	No	n/a	n/a adoption not required	n/a
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	9/1/2021	Yes	No	n/a adoption not required	Pending Adoption

## 5. VARIANCES

During FY 2021, research variances to Oregon Administrative Rule (OAR) 437-007-0935(1) (b) or (c) were granted to six companies. This supported the use of new technology that could replace dangerous tree falling (felling) and timber transporting operations, by workers on the ground, and with operators in machines with protective cabs which met the requirements of OAR 437-007-0775. The approved research variances also provide a means of collecting relevant safety data until Division 7 (OAR Chapter 437 Forest Activities), specifically tethered logging, can address these newly introduced technologies.

One company was granted a variance from Oregon OSHA's COVID-19 Workplace Requirements for Employer-Provided Labor Housing that addresses physical distancing requirements. The variance allows the use of cohorts of up to eight (8) employees who are unrelated or not from the same household, in addition to physical barriers, as an alternative method to physical distancing measures required under OAR 437-004-1115(6).

One company was granted a variance from Oregon OSHA's COVID-19 Workplace Requirements for Employer-Provided Labor Housing that addresses the use of double bunk bed by individuals who are neither related nor part of the same household. The variance allows use of

double bunk beds by individuals from alternating shifts as an alternative method to the requirements under OAR 437-004-1115(6)(a)(A)(ii)(II).

**6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM**

The monetary penalty structure applies to state and local government employers as well as to private sector employers. Inspections in state and local government were conducted in 2.10% (27 of the 1,288) of the total inspections (SAMM 6). This was below the negotiated goal of conducting 2.52 (90 of the 3,570) inspections in this sector. This was also below the FRL range of 2.39% to 2.65%. OSHA will continue to review public sector inspections during quarterly meetings.

**7. WHISTLEBLOWER PROGRAM**

Section 654.062 (5) of the Oregon Safe Employment Act provides for whistleblower protection equivalent to that provided by OSHA. Claims of workplace retaliation for reporting occupational safety and health issues are investigated by the BOLI Civil Right Complaint Division. The BOLI investigators completed OSHA specific training and investigated over 35 different protected classes. There is one Oregon OSHA representative who manages the whistleblower protection program and ensures BOLI conducts quality and timely investigations. Based on a case file review, they generally followed OSHA policies and procedures outlined in the Whistleblower Investigations Manual (WIM).

Performance on SAMM 14 and 16 declined and SAMM 15 was also below the FRL range for FY 2021. BOLI completed 38% of investigations within 90 days, which was lower than the FRL of 100% (SAMM 14). The average number of calendar days to complete an investigation increased to 175 days, above the FRL of 90 days, but was still below the national average of 325 days (SAMM 16). The percent of 11(c) complaints that were meritorious was 11%, which was below the FRL range of 6% to 24%, but due to the fact BOLI does not administratively close cases this effects its percentage for SAMM 15 and was not a cause for concern.

Table D below shows Oregon OSHA/BOLI’s performance over the past three years in regard to SAMMs 14, 15, and 16.

**Table D  
Oregon OSHA Performance on Retaliation SAMM Measures 2019 to 2021**

	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FRL</b>
Completed Within 90 Days (SAMM 14)	92%	75%	38%	100%
Merit Cases (SAMM 15)	5%	15%	11%	16%-24%
Average Number of Calendar Days to Complete Investigation (SAMM 16)	90	109	175	90

OSHA reviewed seven retaliation case files where the complaint was withdrawn by the complainant. In each case, the complainant was advised of the consequences of the withdrawal. This adequately addressed **Finding FY 2020-01**; therefore, this finding is considered completed.

Additionally, OSHA reviewed 100 retaliation case files and found all cases did not include documentation advising complainants of their right to dually file with OSHA. This was **Observation FY 2020-OB-04** and will continue as an observation this year.



For dismissed/non-merit cases, there was no evidence BOLI advised complainants of their right to dually file with OSHA to ensure the complainant retains their right to request a federal review within the outlined filing times. BOLI created “companion” retaliation case files when a complainant filed a claim which encompasses an Occupational Safety Health (OSH) Act section 11(c) complaint and an additional protected class BOLI investigates. The investigation file review with BOLI revealed that they did not maintain letters and documents to show that complainants were advised of their right to dual file in 100% of the cases. BOLI is required by Oregon PD 288 to notify complainants of this right and should document the notification in the 11(c) retaliation companion case file.

**Observation FY 2021-OB-06 (FY 2020-OB-04):**

In 100% (100 of 100) retaliation cases, there was no evidence that complainants were advised of their right to dually file with OSHA.

**Federal Monitoring Plan:**

During the final briefing with OR OSHA and BOLI, OSHA provided BOLI with language to use in their notification letters informing complainants of their right to dually file with OSHA. OSHA will monitor quarterly that Oregon OSHA and BOLI are providing information regarding complainant’s right to file at the federal level and ensure the notification is documented in the retaliation case file.

Proper documentation in retaliation case files is important to ensure the totality of the case is recorded and understood by all parties conducting any type of review after the case has been completed. In 72 of 100 (72%) case files reviewed, proper documentation was not found. Examples include: final signatures on settlement agreements (1), correspondence between BOLI and the parties (107), evidence of review by a supervisor (3), letters of designation (2), complaint summaries (1), interview summaries (4), rebuttal interviews (18), medical information not protected (1), or other documents required to be in the retaliation case file (5). It should be noted that the examples above count each instance in each case file. However, the lack of documentation did not affect the merits of the investigation. Concerns about proper documentation is a new observation in FY 2021.

**Observation FY 2021-OB-07:** Retaliation case files lacked the required documentation in accordance with Oregon PD 288. In 72 out of the 100 case files reviewed, proper documentation was not found.

**Federal Monitoring Plan:**

OSHA will work with the Oregon OSHA liaison and BOLI investigators to ensure that proper documentation is maintained in the case file.

**8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

There was one CASPA accepted against Oregon OSHA in FY 2021. The CASPA alleged that Oregon OSHA did not respond to a complainant’s rebuttal of an employer’s response and that Oregon OSHA did not open an inspection. Both allegations were found to be true.

Upon receiving the employer’s response, Oregon OSHA evaluated it and determined that it was satisfactory and did not schedule an inspection. An email initiating the complainant’s rebuttal was sent to the enforcement manager, but it was inadvertently overlooked. Once this error was discovered, Oregon OSHA gave the complainant an additional 10 days to submit their rebuttal.

Oregon OSHA received the complainant's rebuttal and evaluated it per their administrative procedures.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

In addition to the 100% state-funded consultation program and the 21(d) consultation program, Oregon OSHA has a Voluntary Protection Program (VPP), and a Safety and Health Achievement Recognition Program (SHARP) that encourages and recognizes employers with exemplary safety and health programs. The State Plan's policies and procedures for these programs are adequate, and there were no concerns with Oregon OSHA's performance in this area. During FY 2021, Oregon OSHA recertified two existing VPP sites, no new VPP sites were added and one site withdrew from the program, bringing its total to 20 VPP sites at the end of the fiscal year.

Oregon OSHA's SHARP program is not identical to the federal program as they graduate employers and provide for a different enforcement exemption schedule. Participants are provided assistance during the first four years to become self-sufficient and they "graduate" from the program during their fifth year. While the participant is no longer an active SHARP site after graduation, they are awarded a SHARP graduate plaque and flag and are eligible for full membership in the Oregon SHARP Alliance. New SHARP employers are not exempt from enforcement inspections until their second year in the program. Oregon OSHA then provides an enforcement exemption for the next four years, until the site graduates from the program. Upon graduation, the enforcement exemption is extended for three years, after which the site is no longer eligible. Annual consultation visits are conducted with current SHARP employers. During FY 2021, there were a total of 196 companies participating in the SHARP program, 12 current employers, 164 graduates, and 20 employers working towards SHARP. There were no new employers and no companies became inactive in the SHARP program in FY 2021.

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 2021, Oregon OSHA had 44 active partnerships.

## **10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

Oregon OSHA's consultative visits provided to state and local government employers are conducted by 100% state-funded consultants; however, these consultation visits are included as part of the State Plan's 18(e) final approval and are covered under the 23(g) grant.

In FY 2021, 118 initial consultation visits were conducted in state and local government workplaces. Of these, all (100%) were in high hazard industries (MARC 1). Smaller businesses with fewer than 250 employees received 112 (94.92%) visits (MARC 2A), and businesses with fewer than 500 employees received 85 (72.03%) visits (MARC 2B). The consultant conferred with employees 97.46% of the time in Initial Visits, 100% of the time in Follow-Up Visits, and 82.35% of the time in Training & Education Visits (MARC 3A-3C). During this evaluation period, 104 serious hazards were identified, and 89 (85.58%) were corrected in a timely manner. There were 17 hazards corrected on-site and 72 within the original time. Of these, 89 (85.58%) were corrected within the original timeframe or on-site, which exceeded the goal of 65%. No employers were referred to enforcement (MARC 4A-4D). A total of 137 serious hazards went uncorrected for greater than 90 days past their due date (MARC 5).

The review of 21 public sector consultation files also revealed concerns with the abatement of serious hazards. In 5 of 7 (71%) of files with serious hazards, there was no indication of correction. The Oregon Consultation Application (ORCA) for consultation is not currently set up to track serious hazard correction and Oregon OSHA's rules do not allow consultants to require the correction of serious hazards; this is an issue that has been discussed during quarterly meetings. This will be a new observation in FY 2021.

**Observation FY 2021-OB-08:** Oregon OSHA does not ensure the abatement of serious hazards in state and local government consultations.

**Federal Monitoring Plan:** OSHA will continue to discuss the status of updates to the ORCA system and state regulations.

The state and local government consultation file review found that in 17 of 18 (94%) of files, the written report to the employer did not have a comparison of the employer's Days Away, Restricted or Transferred (DART) to the national average, as required in the Oregon Consultation Reference Guide, What is Required in a Public Entity & 21(d) Report Table on page 17. This is a new observation in FY 2021.

**Observation FY 2021-OB-9:** In 17 of 18 (94%) of state and local government consultation files reviewed, the written report to the employer did not have a comparison of the employer's Days Away, Restricted or Transferred (DART) to the national average.

**Federal Monitoring Plan:** OSHA will conduct a limited file review during the next comprehensive FAME.

The review of state and local consultation files found some concerns with file management and the written report to the employer. Eleven (11) of 21 (52%) of the written reports were missing descriptions of workplace and working conditions. Nineteen (19 of 21 (90%) files were missing at least one type of documentation: 13 did not contain field notes, and 9 did not contain OSHA 300 log information. This is a new observation in FY 2021.

**Observation FY 2021-OB-10:** In FY 2021, the review of state and local government consultation files found concerns with file management and the written report to the employer: 11 of 21 (52%) of the written reports were missing descriptions of workplace and working conditions, and 19 of 21 (90%) files were missing at least one type of documentation: 13 did not contain field notes, and nine did not contain a discussion of the data found on the OSHA 300's for trend analysis.

**Federal Monitoring Plan:** OSHA will conduct a limited file review.

## 11. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAM

Oregon OSHA is unique in that it operates a private sector consultation program that pre-dates OSHA and is not included as part of the State Plan within the 18(e) final approval language. In addition to the 100% funded private sector consultation program, Oregon OSHA has four consultants who provide private sector consultation under Section 21(d) of the OSH Act. The services provided by the 21(d) funded consultants are evaluated in the Regional Annual Consultation Evaluation Report (RACER), which is issued separately from the FAME Report.

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 Oregon OSHA Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	Oregon OSHA conducted 930 of 2,720 (34%) safety and 358 of 850 (43%) health inspections (SAMM 7), both below the further review level. This is following the state reducing the goal from 4,300 inspections to 3,570 inspections.	Oregon OSHA should evaluate the level of the SAMM 7 goal and whether or not it is achievable. This goal has not been met for the past three years. If Oregon OSHA determines that the goal is achievable, then they should develop a plan to ensure that they meet this goal. OSHA will continue to evaluate Oregon OSHA's planned versus actual inspections on a quarterly basis.	FY 2020-OB-01

**Appendix B – Observations Subject to New and Continued Monitoring**  
 FY 2021 Oregon OSHA Comprehensive FAME Report

<b>Observation # FY 2021-OB-#</b>	<b>Observation# FY 2020-OB-# or FY 2020-#</b>	<b>Observation</b>	<b>Federal Monitoring Plan</b>	<b>Current Status</b>
FY 2021-OB-01		The average violations per inspection for both SWRU and other-than-serious were both below the FRL.	OSHA will conduct a limited file review and closely monitor this activity measure in FY 2022 to ensure that Oregon OSHA makes the modest improvement in this area to be within range of the FRL.	New
FY 2021-OB-02		Oregon OSHA’s penalties are significantly below the national average and FRL for all categories of employer.	OSHA will monitor this over FY 2022 and will evaluate in a focused case file review at the conclusion of the FY.	New
FY 2021-OB-03		In FY 2021, in 14 of 15 (93%) inspections where workers were unionized, the union did not participate in the inspection, and the lack of involvement was not adequately explained in the file.	OSHA will conduct a limited casefile review.	New
FY 2021-OB-04	FY 2020-OB-03	The confidentiality of employees interviewed during inspections was not ensured during the appeal process.	OSHA will monitor the State Plan to determine Oregon OSHA’s ability to protect the identities of employees who participate in enforcement activities.	Continued (2019)
FY 2021-OB-05		Oregon OSHA did not adopt federal program changes timely.	OSHA will continue to track Oregon OSHA’s progress on adoption of federal program changes and will discuss the status during quarterly meetings.	New
FY 2021-OB-06	FY 2020-OB-04	In 100% (100 of 100) retaliation cases, there was no evidence that complainants were advised of their right to dually file with OSHA.	OSHA will monitor quarterly that Oregon OSHA and BOLI are providing information regarding complainant’s right to file at the federal level and ensure the	Continued (2019)

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2021 Oregon OSHA Comprehensive FAME Report

			notification is documented in the retaliation case file.	
FY 2021-OB-07		Retaliation case files lacked the required documentation in accordance with Oregon PD 288. In 72 out of the 100 (72%) case files reviewed, proper documentation was not found.	OSHA will work with the Oregon OSHA liaison and BOLI investigators to ensure that proper documentation is maintained in the case file.	New
FY 2021-OB-08		Oregon OSHA does not ensure the abatement of serious hazards in state and local government consultations.	OSHA will continue to discuss the status of updates to the ORCA system and state regulations.	New
FY 2021-OB-09		In 17 of 18 (94%) of state and local government consultation files reviewed, the written report to the employer did not have a comparison of the employer’s Days Away, Restricted or Transferred (DART) and Total Recordable Case (TRC) to the national average.	OSHA will conduct a limited casefile review during the next comprehensive FAME.	New
FY 2021-OB-10		In FY 2021, the review of state and local government consultation files found concerns with file management and the written report to the employer: 11 of 21 (52%) of the written reports were missing descriptions of workplace and working conditions, and 19 of 21 (90%) files were missing at least one type of documentation: 13 did not contain field notes, and nine did not contain a discussion of the data found on the OSHA 300’s for trend analysis.	OSHA will conduct a limited casefile review -during the next comprehensive FAME	New
	FY 2020-OB-01	Oregon OSHA conducted 1,441 of 3,400 safety and 531 of 900 health inspections (SAMM 7), both below the further review level.	OSHA will continue to monitor Oregon OSHA’s planned versus actual inspections.	Converted to Finding

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2021 Oregon OSHA Comprehensive FAME Report

	FY 2020-OB-02	In FY 2019, OSHA 300 data was not in the case file nor in the database in 14% (23 of 167) of case files reviewed. In addition, OSHA 300 data is not transferring to OIS.	OSHA will monitor this over the next FY and will evaluate collection and retention of OSHA 300 data in a focused case file review.	Closed
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## Appendix C - Status of FY 2020 Findings and Recommendations

### FY 2021 Oregon OSHA Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	In FY 2019, in 100% (4 of 4) of cases withdrawn by the complainant, there was no documentation that BOLI advised the complainant of the consequences of the withdrawal.	Oregon OSHA should ensure BOLI is advising each complainant wishing to withdraw that, by entering a withdrawal, they will be forfeiting all rights to an appeal or objection, and the case will not be reopened. Corrective action complete, awaiting verification.	Oregon OSHA is ensuring that BOLI is issuing a letter to complainants to advise them of the consequences of a withdrawal, losing all appeal rights with Oregon OSHA and federal OSHA. Oregon OSHA is checking during quarterly audits with BOLI (delays due to COVID-19 restrictions) to ensure that appropriate closing letters are in case files. Audits were conducted on 1/23/20, 4/29/21, and 7/29/21.	1/10/2022	Completed



## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 Oregon OSHA Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	14.38	5 days for serious hazards; 30 days for other-than-serious hazards	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	5.43	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	4.58	10	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	4.58	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	3	0	The further review level is fixed for all State Plans.
<b>5a</b>	Average number of violations per inspection with violations by violation type (SWRU)	1.39	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
<b>5b</b>	Average number of violations per inspection with violations by violation type (other)	0.69	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

### FY 2021 Oregon OSHA Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>6</b>	Percent of total inspections in state and local government workplaces	2.10%	+/- 5% of 2.52%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 2.39% to 2.65%.
<b>7a</b>	Planned v. actual inspections (safety)	930	+/- 5% of 2,720	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 2,584 to 2,856 for safety.
<b>7b</b>	Planned v. actual inspections (health)	358	+/- 5% of 850	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 807.50 to 892.50 for health.
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$620.02	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$521.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$782.23	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	<b>c.</b> Average current serious penalty in private sector	\$584.71	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

### FY 2021 Oregon OSHA Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	(101-250 workers)			requiring further review is from \$3,990.12 to \$6,650.20.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$1,301.67	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
<b>9a</b>	Percent in compliance (safety)	39.01%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
<b>9b</b>	Percent in compliance (health)	43.64%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
<b>10</b>	Percent of work-related fatalities responded to in one workday	79.63%	100%	The further review level is fixed for all State Plans.
<b>11a</b>	Average lapse time (safety)	46.47	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
<b>11b</b>	Average lapse time (health)	46.69	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
<b>12</b>	Percent penalty retained	97.51%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

### FY 2021 Oregon OSHA Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
13	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	38%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	11%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	175	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.35%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 8, 2021, as part of OSHA's official end-of-year data run.