

FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

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



Evaluation Period: October 1, 2022 – September 30, 2023

Initial Approval Date: December 28, 1972

Program Certification Date: September 24, 1982

Final Approval Date: May 12, 2005

Prepared by:

U.S. Department of Labor

Occupational Safety and Health Administration

Region 10

Seattle, WA



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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) and Fiscal Year (FY) 2023 regarding activities mandated by the Occupational Safety and Health Administration (OSHA). In addition, this report gauges the State Plan's progress in resolving any outstanding findings and observations from the previous FY 2022 Partial Federal Annual Monitoring Evaluation (FAME) Report.

Oregon OSHA maintained a high level of program performance during the review period. The State Plan implemented an excellent training program for its staff, made progress increasing staffing levels, and hired a new policy analyst. Oregon OSHA maintained over 40 alliances and partnerships during this review period. Finally, OSHA approved Oregon OSHA's updates to temporary labor camp rules that took full effect in 2018, and a federal register notice was issued on August 30, 2023, removing the temporary labor camp exception from Oregon OSHA's final approval. The Oregon legislature passed Senate Bill 592, requiring Oregon OSHA to adopt higher penalties which align with federal OSHA's 2023 penalty schedule, with some types of violations higher than federal OSHA. The new penalty schedule went into effect on January 1, 2024. By statute, Oregon OSHA will adjust the penalty schedule annually based on changes to the Western Region Consumer Price Index.

The State Plan made progress in addressing the previous nine observations from the FY 2022 Follow-up FAME Report. Three observations were closed, and two new observations were added. There are two new findings, five continued observations, and two new observations. Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings 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 except for temporary labor camp enforcement. The temporary labor camp standard was revised by Oregon OSHA to meet federal concerns. The temporary labor camp exemption was removed on August 30, 2023. Final approval is a significant achievement.

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. Renée Stapleton was formally appointed as the Administrator for Oregon OSHA on October 27, 2022.

In Oregon, the Bureau of Labor and Industries (BOLI) has statutory responsibility for accepting, processing, and making determinations on complaints alleging retaliation and workers' rights, which

includes 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 involving safety and health.

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 2023, 23(g) grant funds were allocated for 79 compliance officers. The Oregon OSHA staffing levels for the 21(d) program (four) were maintained throughout the year. In the FY 2023 grant application, there were an estimated 1,705,131 workers covered by Workers' Compensation insurance employed in Oregon with an estimated 128,000 employers. These employers operate at approximately 209,830 locations.

In FY 2023, the federally approved state OSHA program was funded at \$29,743,823. The state matched the initial federal base award of \$5,706,900. The federal base award was increased by \$349,800 in June. A one-time only award of \$767,857 in July and another one-time only award of \$530,139 in August contributed to the total federal grant of \$7,354,696. The state matched the total federal grant of \$7,354,696 and added an additional \$15,034,431 in 100% state funds to its budget. The state reported final expenditures to be \$33,828,345 (\$7,354,696 federal, \$7,354,696 state match, and \$19,118,953 in 100% state funds). In August 2021, the state was awarded an ARPA 23(g) grant, covering October 2021 through September 2023. The award amount was \$5,800,000 (\$2,900,000 ARPA funds and \$2,900,000 state match). The state reported final ARPA 23(g) grant expenditures to be \$2,864,510 (\$1,432,255 federal and \$1,432,255 state match).

B. New Issues

OSHA approved Oregon OSHA's updates to temporary labor camp rules that took full effect in 2018, and a federal register notice was issued on August 30, 2023, removing the temporary labor camp exception from Oregon OSHA's final approval.

In FY 2023, Senate Bill 592 was passed, requiring Oregon OSHA to adopt a new penalty schedule which is updated annually according to the Western Region Consumer Price Index. The new penalty schedule went into effect on January 1, 2024.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A six-person OSHA team was

assembled to conduct a full on-site case file review. The case file review was conducted at the Oregon State Plan office during the timeframe of November 13-16, 2023. Additionally, a second on-site evaluation occurred at BOLI Portland Office to review the whistleblower case files. A total of 168 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2022, through September 30, 2023). The selected population included:

- Eighteen (18) fatality case files
- Thirty-five (35) complaint case files
- Fifty (50) Safety related case files
- Fifty (50) Health related case files
- Fifteen (15) case files with health sampling

A total of 121 retaliation investigations were completed and no complaints were administratively closed in FY 2023. The percentage that each category comprised of the total completed cases was determined and applied to the sample size. A total of 76 closed retaliation case files were selected as follows:

- Six (6) withdrawn
- Fifty-nine (59) dismissed
- Seven (7) referred for litigation
- Four (4) Settled Other

A total of 132 consultation visits were conducted in state and local government in FY 2023. OSHA reviewed 23 of these files.

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report
- Mandated Activities Report for Consultation
- State OSHA Annual Report
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2023 State Activity Mandated Measures Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

- a) Training
A total of 333 different courses were offered to the safety and health staff with 119 of 125(95.2%) of them receiving at least 48 hours of training in FY 2023. 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 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 OSHA's 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 in OTIS, such as the SOAR, these differences are explained in this report. Some differences are minor and are due to the date being generated on different dates.
- c) State Internal Evaluation Program Report
Oregon OSHA started conducting a systematic SIEP in March of 2022. The most recent SIEP was completed on January 5, 2024. There were no substantial deficiencies noted. Oregon OSHA systematically pulls 30% of all casefiles and all accident files for review.
- d) Staffing
In the FY 2023 grant application, Oregon OSHA allocated for 56 safety compliance officers and 29 health compliance officers. However, three were designated for inspections that were exempted from scheduled inspections due to Congressional appropriations riders and were conducted with 100% state funds only, while three were dedicated to pesticide inspections. These six were not captured in the 23(g) grant. As of July 1, 2022, Oregon OSHA had 61.40 FTE of compliance officers on board (40.70 FTE safety and 20.70 health.) In the FY 23 grant application, the state projected that 2.88 FTE safety and 1.92 FTE health consultants would conduct federally funded work in state and local governments under the 23(g) grant.

2. ENFORCEMENT

a) Complaints

According to SAMM 1a, there were 2,636 complaint inspections in FY 2023. The average number of days to initiate a complaint inspection (state formula) was 6.47 days. There were 1,524 complaint investigations according to SAMM 2a, and the average number of workdays to initiate the investigation was 2.15 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 2023 SOAR reported the results, when separated by complaint type, as a percent of timely response as follows:

- 100% (17 of 17) for imminent danger complaints and referrals
- 97.4% (847 of 870) for serious hazard complaints
- 98.7% (307 of 311) for other-than-serious hazard complaints
- 93.3% (1,455 of 1,524) for phone fax, letter investigations

The goals for timely response for imminent danger, serious, other-than-serious hazard complaints and phone/fax, and letter investigation were within acceptable range of set goals.

There were no denials of entry where entry was not obtained (SAMM 4).

b) Fatalities

The review of 18 fatality inspection cases files found well-documented investigations that explained the events leading up to the incident. The documentation supported the findings and citations where appropriate. Initial letters to the families and follow-up letters were provided, with one exception where Oregon OSHA was unable to locate the next of kin and could not send the appropriate letters.

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 opens an inspection and begins investigating within 24 hours based on the work-related factors received at intake, but it is possible that onsite activity by Oregon OSHA does not occur while law enforcement is still on scene processing the accident.

Twenty-nine (29) of 31 (93.55%) fatalities were responded to within one working day (SAMM 10). The FRL to open fatality investigations within one day of receiving notification is 100%. Both outliers were satisfactorily explained. One case was originally reported as a nonfatal accident but was later revised to a fatality. In the second case, Oregon OSHA was unable to determine the employer until contact was made with the Oregon State Patrol.

c) Targeting and Programmed Inspection

Percent of enforcement presence (SAMM 7) 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 2.76%, which was above the FRL range of 1.31% to 2.19%. The high enforcement rate presence indicates that the State Plan is reaching more employers with enforcement activity than the national average.

A total of 2,687 inspections were conducted: 713 health and 1,974 safety inspections. This is 137 over the goal of 2,550. The safety inspections were on target of the FRL, with the total of 124 inspections above the goal of 1,850 in FY 2023. The health inspections were also on target of the FRL, being 13 inspections above the goal of 700. Oregon OSHA exceeded their inspection goal in FY23, thus **Observation FY 2022-OB-09** is now closed.

The in-compliance rate was 31.43% for safety inspections, which is on target of the FRL of 25.38% to 38.08% (SAMM 9). This activity measure was consistent through the year and is of no concern. The in-compliance rate for health was 23.83%, which is below the FRL of 35.06% to 52.58%, thus the State Plan excelled for this measure.

The average number of serious/willful/repeat/unclassified violations per inspection was 1.45, which was 0.05 above the FRL range of 1.40 to 2.10 for this metric (SAMM 5). The average number of other-than-serious violations per inspection was 1.06, which was within the FRL range of 0.71 to 1.07.

The average violations per inspection for both SWRU and other-than-serious were both within their respective FRLs.

Oregon OSHA had two cases of extreme significance. One is case 317733164, which was a catastrophic fatality event involving 7 employees in a motor vehicle accident. The second set of inspections 317733678/317733749, were also related to a motor vehicle accident which was another catastrophic fatality involving 3 employees and 2 employers.

d) Citations and Penalties

The FRL for average penalty are based on +/-25% of the three-year national average. The average serious penalty for all employers (1-250+ workers) was \$604.08, which was \$2,114.83 below the FRL range of \$2,718.91 to \$4,531.51 in FY 2023 (SAMM 8). For private sector employees with 101-250 workers, the average serious penalty issued was \$926.66, which was \$3,612.04 below the FRL range of \$4,539.03 to \$7,565.05 in FY 2023 (SAMM 8c). For private sector employees with more than 250 workers, the average serious penalty issued was \$1,000.67, which was \$4,497.89 below the FRL range of \$5,498.56 to \$7,565.05 in FY 2023 (SAMM 8d). On December 22, 2017, Administrative Order 8-2017, raising both minimum and maximum penalties for alleged violations was adopted. However, the average penalty amounts have stayed below the FRL. In 2023, Oregon passed legislation requiring Oregon OSHA to align with OSHA's penalty structure and will update the penalties annually based on the Western Region Consumer Price Index. **Observation 2022-OB-01**, regarding Oregon OSHA's average penalties being lower than the federal review level, is now closed.

e) Abatement

Each hazard must be abated, and adequate verification of the correction must be included in case files. The lapse time for safety was 41.27, which was below the FRL of 44.18 to 66.28 workdays (SAMM 11a). The health inspection time lapse was 51.34, which was also below the FRL of 55.78 to 83.66 workdays (SAMM 11b).

Both of these metrics were both slightly below their respective FRLs, which means that Oregon

OSHA was faster than the national average at completing and issuing cases. All cases that were reviewed presented adequate verification and evidence of abatement.

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 worker interviews (SAMM 13). The case file review noted that 17 of 165 (10.30%) of sites were unionized. Nine of the seventeen noted the union representative being present during the walkaround and the opening conference.

The identity of employees interviewed or who otherwise participated in protected activities was not withheld under the informant privilege provided in Chapter 3, Section VII, I, 5c of OSHA's Field Operations Manual (FOM); Oregon law and rules do not currently provide for informants' privilege. 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). While Oregon OSHA does interview employees privately in the moment, the subsequent public record (once requested) does not provide employees anonymity, except for complainants. This has the potential to expose employees who participate in enforcement inspections to retaliation and may 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.

Oregon OSHA has been working to address the concern about witness confidentiality through legislative action and drafted a bill for the Oregon legislative session during FY 2023. During meetings, stakeholders objected to some of the included discretionary language. Oregon OSHA is working with OSHA, Department of Labor solicitors, and worker advocate groups to resolve this issue and draft an updated bill. However, this remains a concern and will continue to be an observation.

Observation FY 2023-OB-01 (FY 2022-OB-02): The confidentiality of employees interviewed during inspections was not ensured during the appeal process.

Federal Monitoring Plan: OSHA will continue to work with and provide guidance to Oregon OSHA to ensure the confidentiality 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 the Oregon Department of Justice. The informal conference often occurs after the notice of appeal as the first step to resolve any dispute with the citation. However, the employer does not have to participate in an informal conference as they can choose to go straight to formal hearing at the Workers Compensation Board.

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 abatement period established during the closing conference. If contested, the abatement period for other-than-serious violations does not begin until all appealed items become a final order.

Oregon OSHA “informal conferences” are different than the OSHA equivalent, because any changes after the initial citation need to be reviewed and signed by the Oregon Workers Compensation Board, even if they were handled more “informally” by Oregon OSHA appeals specialists. Therefore, OSHA requested penalty retention information from Oregon OSHA to supplement SAMM 12. The most recent data provided by Oregon OSHA covered citations issued between 10/1/2022 and 9/30/2023 and showed that when overall initial penalties were compared to final penalties, 94.63% of the penalty was retained. Per SAMM 12, the retention rate for penalties was 101.28% (SAMM 12). The FRL for this measure was 61.06% to 82.62%. The casefile review did not reveal any issues or deficiencies related to informal proceedings.

b) Formal Review of Citations

For FY 2023, 0% of violations were vacated after a contest was filed, below the national average of 15.30% (SIR 5b) and 0% of violations were reclassified after the contest, below the national average of 12.40% (SIR 6b). The penalty retention rate was 90.36% versus the national average of 66.14% (SIR 7b). The enforcement case file review did not reveal any issues or deficiencies related to formal settlement proceedings.

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 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. 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 four of six standards that required an intent response in FY 2022 and 2023. The notice of intent was late for two standards. All four

standards that required adoption have been adopted. The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn.

Table A
Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910, 15, 17, 18, 26, 28 (11/5/2021)	11/20/2021	None	None	None	12/5/2021	N/A
Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910 (11/5/2021)	1/7/2022	12/23/2021	Yes	No	1/24/2022	N/A
Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022 29 CFR 1903 (1/15/2022)	3/15/2022	4/5/2022	Yes	No	7/15/2022	1/1/2024
Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r) (2/14/2022)	4/14/2022	4/14/2022	Yes	No	8/14/2022	12/21/2021

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023 29 CFR 1903 (1/15/2023)	3/15/2023	2/14/2023	Yes	No	7/15/2023	1/1/2024
Final Rule to Improve Tracking of Workplace Injuries and Illnesses 29 CFR 1904 (7/21/2023)	9/21/2023	9/19/2023	Yes	No	1/21/2024	12/21/2023

In FY 2022 and FY 2023, Oregon OSHA provided an intent response timely for 9 of 10 (90%) of FPCs. Two were adopted late and two have not been adopted. Timely adoption of FPCs will be a continued observation in FY 2023.

Observation FY 2023-OB-02 (FY 2022-OB-03): Oregon OSHA did not 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 B
Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Required
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Revised Combustible Dust National Emphasis Program CPL 03-00-008 (1/30/2023)	3/31/2023	3/23/2023	Yes	No	7/30/2023	Not yet adopted.
National Emphasis Program on Warehousing and Distribution Center Operations CPL 03-00-026 (7/13/2023)	9/11/2023	9/8/2023	Yes	No	1/9/2024	12/29/2023

Table C

Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Equivalency Was Required

(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Compliance Directive for Cranes and Derricks in Construction Standard CPL 02-01-063 (2/11/2022)	7/3/2022	7/1/2022	Yes	No	11/3/2022	10/14/2022
OSHA Whistleblower Investigations Manual CPL 02-03-011 (4/29/2022)	10/11/2022	9/30/2022	Yes	No	2/11/2023	9/20/2023
Severe Violator Enforcement Program (SVEP) CPL 02-00-169 (9/15/2022)	11/15/2022	7/11/2023	Yes	No	3/15/2023	Not yet adopted.
Site-Specific Targeting (SST) CPL 02-01-064 (2/7/2023)	4/8/2023	3/24/2023	Yes	No	8/6/2023	5/10/2012
National Emphasis Program – Falls CPL 03-00-025 (5/1/2023)	6/30/2023	6/29/2023	Yes	No	10/28/2023	11/27/2023
Consultation Policies and Procedures Manual CSP 02-00-005 (9/29/2023)	11/28/2023	11/14/2023	Yes	No	3/27/2024	3/26/2024

Table D
Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	State Plan Adoption Date
OSHA's Use of Small Unmanned Aircraft Systems CPL 02-01-169 (12/22/2021)	2/22/2022	3/25/2022	No	N/A	N/A
National Emphasis Program – Outdoor and Indoor Heat-Related Hazards CPL 03-00-024 (4/8/2022)	6/8/2022	4/28/2022	Yes	No	5/9/2022

Table E
FY 2022 and FY 2023 State-Initiated Changes

State-Initiated Change	Adoption Date	Effective Date
Administrative Order 2-2023- Repeal of Rules Addressing the COVID-19 Public Health Emergency and Work Clothing Changes	8/16/2023	8/17/2023
Administrative Order 1-2023- Rescinded Rules Addressing the COVID-19 Public Health Emergency and Amended Work Clothing Rules	3/30/2023	4/3/2023
Administrative Order 6-2022- Adoption of Rules Addressing COVID-19 Workplace Requirements for Employer-Provided Labor Housing	10/6/2022	10/7/2022
Administrative Order 5-2022- Amendments to COVID-19 Public Health Emergency in All Oregon Workplaces	9/9/2022	9/12/2022
Administrative Order 4-2022- Employee Exposure to Wildfire Smoke	5/10/2022	7/1/2022
Administrative Order 3-2022- Employee and Labor Housing Occupant Exposure to High Ambient Temperatures	5/9/2022	6/15/2022
Administrative Order 2-2022- Adjusted Temporary Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing	4/13/2022	4/13/2022
Administrative Order 1-2022- Adjusted Temporary Rules Addressing the COVID-19 Public Health Emergency in All Workplaces	3/18/2022	3/18/2022
Administrative Order 15-2021- Amended Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing	12/21/2021	12/21/2021
Administrative Order 14-2021- Amended Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces	12/21/2012	12/21/2012

State-Initiated Change	Adoption Date	Effective Date
Administrative Order 13-2021- Adopted Increase of Certain Minimum and Maximum Penalties for Alleged Violations	11/1/2021	12/1/2021
Administrative Order 12-2021- Medical Relief Benefits in Rules Addressing the COVID-19 Public Health Emergency in All Workplaces	9/14/2021	9/16/2021
Administrative Order 11-2021- Rules to Reduce Manganese Permissible Exposure Limit; Cross-References Welding Rules with Other Standards Including Confined Spaces	9/1/2021	9/1/2021

5. VARIANCES

During FY 2023 Oregon OSHA granted a total of five variances to employers: Five companies were granted new research variances from OAR 437-007-0935(1)(c) to support the use of mechanized harvesting technology in the logging industry that reduces employee exposure to the struck-by hazards associated with hand felling operations by allowing the use of machines equipped with protective cabs for the operators. The approved research variances continue to provide a means of collecting relevant safety data to support future Division 7 (Forest Activities) rulemaking for the new mechanized harvesting method.

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 2.84% (72 of the 2,550) of the total inspections (SAMM 6). This was above the negotiated goal of conducting 2.52% (64 of the 2,550) inspections in this sector. This was also above the FRL range of 2.40% 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 provides oversight of the whistleblower protection program and ensures BOLI conducts quality and timely investigations. Based on a case file review, BOLI generally followed OSHA policies and procedures outlined in the Whistleblower Investigations Manual (WIM) and Oregon Program Directive A-288.

OSHA reviewed 76 retaliation case files and found no cases included documentation advising complainants of their right to dually file with OSHA. However, in one case the complainant had already dual filed a complaint with OSHA at the time they filed with BOLI, therefore dual filing notification was unnecessary. In 25 instances, the complainant had not contacted BOLI until more than 30 days after the last date of alleged harm. However, BOLI still needs to advise complainants of the right to dual file. OSHA can re-evaluate the statute of limitations for the case for tolling, or if other statutes apply. This was an observation in FY 2022 (FY 2022-OB-04)

and became a finding this year.

Finding FY 2023-01 (FY 2022-OB-04): In 100% (76 of 76) retaliation cases, there was no evidence that complainants were advised of their right to dually file with OSHA.

Recommendation: BOLI must use language in their notification letters informing complainants of their right to dually file with OSHA. Oregon OSHA should monitor BOLI to ensure this information is documented and in the retaliation casefile.

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. BOLI maintains a separate investigative system and files are extracted to create a case file for OSHA's review. Of the extracted case files, there were 100% instances of lack of proper documentation in case files. This was an observation in FY 2021-OB-07 and FY 2022-OB-05 and is broken out into two observations and a finding this year. During the final briefing with Oregon OSHA and BOLI, OSHA suggested Oregon OSHA and BOLI adopt or use as a reference CPL 02-03-009, Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program (effective date 06/18/2020) or create a step-by-step guide on extracting files from BOLI's investigative system, which would include the documentation in their investigative system of delivery of letters and activity log. This would help ensure the required documentation is contained in the case files available for review.

Observation FY 2023-OB-03 (FY 2022-OB-05): In 100% (76/76) of retaliation case files reviewed, although draft letters were present in the file, there was no specific information on delivery of official letters presented for review.

Federal Monitoring Plan: OSHA will monitor quarterly that Oregon OSHA and BOLI are properly documenting retaliation investigations and will conduct a limited file review for FY 2024.

Observation FY 2023-OB-04: The activity log was not presented for review in 92% (70/76) of retaliation files.

Federal Monitoring Plan: OSHA will monitor quarterly that Oregon OSHA and BOLI are properly documenting retaliation investigations and will conduct a limited file review for FY 2024.

Finding FY 2023-02 (FY 2022-OB-05): In 68% (52/76) of retaliation files reviewed, there was inconsistent documentation on allowing complainant to rebut the respondent's information.

Recommendation: Oregon OSHA should ensure BOLI is following OR OSHA PD A-288 by allowing complainants to rebut the information provided respondents during investigations and that the rebuttal is documented in the case files.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

There were no new CASPAs in FY 2022 or 2023.

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 2023, Oregon OSHA recertified two existing VPP sites. No new VPP sites were added, and one site withdrew from the program, bringing the total to 20 VPP sites at the end of 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 helped 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. While they are in the program, Oregon OSHA then provides an enforcement deferral 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 2023, a total of 180 Oregon companies participated in the SHARP program. This total includes: 3 new certified SHARP employers, 2 working towards SHARP, 10 active employers, and 168 graduates, for an overall SHARP participation of 180 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 2023, 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 2023, 133 consultation visits were conducted in state and local government workplaces. 127 were initial visits. Of these, 65/127 (51%) were in high hazard industries (MARC 1). Smaller businesses with fewer than 250 employees received 118 (92%) visits (MARC 2A), and businesses with fewer than 500 employees received 77 (60%) visits (MARC 2B). The consultant conferred with employees 100% of the time in Initial Visits, 100% of the time in Follow-Up Visits, and 100% of the time in Training & Education Visits (MARC 3A-3C). During this evaluation period, 104 serious hazards were identified, and 96 (92%) were corrected in a timely manner. There were 32 hazards corrected on-site and 64 within the abatement due date. Of these, 92% were corrected within the original timeframe or on-site, which exceeded the goal of 65%. No employers were referred to enforcement (MARC 4A-4D).

Twenty-three (23) state and local government consultation files were reviewed in FY 2023. Improved file management and written reports to the employer were found, therefore **FY 2022-OB-08** regarding documents missing from reports is completed.

Two observations were found regarding missing OSHA 300 logs and DART rate comparisons.

Observation FY 2023-OB-05: OSHA 300 logs were not in the files in five of nine (55%) state and local government consultation files reviewed, for employers with 10 or more employees at the worksite.

Federal Monitoring Plan: OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited file review during the next comprehensive FAME.

Observation FY 2023-OB-06 (FY 2022-OB-07): The DART rate comparison in the report to the employer was missing in 4 of 9 (44%) state and local government consultation files reviewed with 10 or more employees at the worksite.

Federal Monitoring Plan: OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited file review during the next comprehensive FAME.

A continued observation of inadequate abatement documentation for serious hazards was found in FY23 during visit case file review.

Observation FY 2023-OB-07 (FY 2022-OB-06): In FY 2023, inadequate abatement documentation for serious hazards was found in 7 of 14 (50%) state and local government consultation files reviewed for employers which had serious hazards at their worksite.

Federal Monitoring Plan: OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited file review during the next comprehensive FAME.

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 2023 Oregon OSHA Comprehensive FAME Report

FY 2023-#	Finding	Recommendation	FY 2022-# or FY 2022-OB-#
FY 2023-01	In 100% (76 of 76) retaliation cases, there was no evidence that complainants were advised of their right to dually file with OSHA.	BOLI must use language in their notification letters informing complainants of their right to dually file with OSHA. Oregon OSHA should monitor BOLI to ensure this information is documented and in the retaliation casefile.	FY 2022-OB-04
FY 2023-02	In 68% (52/76) of retaliation files reviewed, there was inconsistent documentation on allowing complainant to rebut the respondent’s information.	Oregon OSHA should ensure BOLI is following OR OSHA PD A-288 by allowing complainants to rebut the information provided respondents during investigations and that the rebuttal is documented in the case files.	FY 2022-OB-05 FY 2021-OB-07

Appendix B – Observations Subject to New and Continued Monitoring

FY 2023 Oregon OSHA Comprehensive FAME Report

Observation # FY 2023-OB-#	Observation# FY 2022-OB-# or FY 2022-#	Observation	Federal Monitoring Plan	Current Status
FY 2023-OB-01	FY 2022-OB-02 FY 2021-OB-04 FY 2020-OB-03 FY 2019-OB-03	The confidentiality of employees interviewed during inspections was not ensured during the appeal process.	OSHA will continue to work with and provide guidance to Oregon OSHA to ensure the confidentiality of employees who participate in enforcement activities.	Continued
FY 2023-OB-02	FY 2022-OB-03 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 the quarterly meetings.	Continued
FY 2023-OB-03	FY 2022-OB-05 FY 2021-OB-07	In 100% (76/76) of retaliation case files reviewed, although draft letters were present in the file, there was no specific information on delivery of official letters presented for review.	OSHA will monitor quarterly that Oregon OSHA and BOLI are properly documenting retaliation investigations and will conduct a limited file review for FY 2024.	Continued
FY 2023-OB-04		The activity log was not presented for review in 92% (70/76) of retaliation files.	OSHA will monitor quarterly that Oregon OSHA and BOLI are properly documenting retaliation investigations and will conduct a limited file review for FY 2024.	New
FY 2023-OB-05		OSHA 300 logs were not in the files in five of nine (55%) state and local government consultation files reviewed, for employers with 10 or more employees at the worksite.	OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited file review during the next comprehensive FAME.	New
FY 2023-OB-06	FY 2022-OB-07 FY 2021-OB-09	The DART rate comparison in the report to the employer was missing in five of nine (44%) state and local government consultation files reviewed with 10 or more employees at the worksite.	OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited file review during the next comprehensive FAME.	Continued
FY 2023-OB-07	FY 2022-OB-06 FY 2021-OB-08	In FY 2023, inadequate abatement documentation for serious hazards was found in 7 of 14 (50%) state and local government	OSHA will discuss with Oregon OSHA during quarterly meetings and with the Consultation Program Manager. OSHA will conduct a limited	Continued

Appendix B – Observations Subject to New and Continued Monitoring

FY 2023 Oregon OSHA Comprehensive FAME Report

Observation # FY 2023-OB-#	Observation# FY 2022-OB-# or FY 2022-#	Observation	Federal Monitoring Plan	Current Status
		consultation files reviewed for employers which had serious hazards at their worksite.	file review during the next comprehensive FAME.	
	FY 2022-OB-01 FY 2021-OB-02	Oregon OSHA`s penalties are significantly below the national average and FRL for all categories of the employer.		Closed
	FY 2022-OB-08 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%) 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.		Closed
	FY 2022-OB-09 Finding FY 2021-01	Oregon OSHA conducted 1375 of 1600 (86%) of safety and 516 of 550 (94%) of health inspections (SAMM 7), both below the further review level. This is following the state reducing the goal from 3,570 inspections in in FY 2021 to 2,150 inspections in FY 2022		Closed

Appendix C - Status of FY 2022 Findings and Recommendations

FY 2023 Oregon OSHA Comprehensive FAME Report

FY 2022-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
	N/A				

Appendix D - FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 Oregon OSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	6.47	5 days for serious hazards; 30 days for other-than-serious hazards	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	3.96	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	2.15	10	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	2.15	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	94.12%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

Appendix D - FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 Oregon OSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
5a	Average number of violations per inspection with violations by violation type (SWRU)	1.45	+/- 20% of 1.75	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	1.06	+/- 20% of 0.89	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS.
6	Percent of total inspections in state and local government workplaces	2.84%	+/- 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 2.40% to 2.65%.
7a	Planned v. actual inspections (safety)	1,967	+/- 5% of 1,850	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 1,757.5 to 1,942.5 for safety.
7b	Planned v. actual inspections (health)	705	+/- 5% of 700	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 665 to 735 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$604.08	+/- 25% of \$3,625.21	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,718.91 to \$4,531.51.
8a	Average current serious penalty in private sector (1-25 workers)	\$457.00	+/- 25% of \$2,348.03	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,761.02 to \$2,935.04.

Appendix D - FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 Oregon OSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
8b	Average current serious penalty in private sector (26-100 workers)	\$711.16	+/- 25% of \$4,167.28	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,125.46 to \$5,209.10.
8c	Average current serious penalty in private sector (101-250 workers)	\$926.99	+/- 25% of \$6,052.04	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,539.03 to \$7,565.05.
8d	Average current serious penalty in private sector (greater than 250 workers)	\$1,000.67	+/- 25% of \$7,331.41	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$5,498.56 to \$9,164.26.
9a	Percent in compliance (safety)	31.43%	+/- 20% of 31.73%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety.
9b	Percent in compliance (health)	23.83%	+/- 20% of 43.82%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health.
10	Percent of work-related fatalities responded to in one workday	93.55%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	41.27	+/- 20% of 55.23	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety.
11b	Average lapse time (health)	51.34	+/- 20% of 69.72	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health.

Appendix D - FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 Oregon OSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
12	Percent penalty retained	101.28%	+/- 15% of 71.84%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%.
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	N/A*	N/A*	This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.
15	Percent of 11(c) complaints that are meritorious	N/A*	N/A*	This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.
16	Average number of calendar days to complete an 11(c) investigation	N/A*	N/A*	This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.
17	Percent of enforcement presence	2.68%	+/- 25% of 0.93%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%.

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 14, 2023, as part of OSHA's official end-of-year data run.