



Oregon
Theodore R. Kulongoski, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (OR-OSHA)
www.orosha.org

September 20, 2010

Dean Ikeda
Acting Regional Administrator
US Department of Labor
Occupational Safety & Health Administration
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Seattle, WA 97101-3212

Subject: Response to 2010 EFAME Report

Dear Mr. Ikeda:

Thank you for the opportunity to provide an initial response to the Enhanced Federal Annual Monitoring & Evaluation (EFAME) Report for federal fiscal year 2010.

As you know, Oregon OSHA and federal OSHA Region X have a long history of constructive and productive interaction. We believe that the 2010 report represents a relatively modest enhancement in a long history of comprehensive and rigorous review by Region X of the Oregon state plan's activity. Because of that history, and because Region X has effectively raised and resolved concerns throughout the past decade, not only in the annual audits but in our regular quarterly meetings, this year's enhanced audit process probably raised fewer problems for either the region or the state than appears to have been the case elsewhere in the country.

We certainly concur with the overall findings of the audit with regard to the effectiveness of Oregon OSHA's program and the way we handle our enforcement and other responsibilities. As the report correctly notes, Oregon OSHA meets or exceeds virtually every indicator, whether in the mandated activities or in the pursuit of our annual and strategic goals. We appreciate the fact that, again this year and even in light of the enhanced attention brought to state plan monitoring, the Oregon FAME report has very few recommendations. And we welcome your continued oversight and monitoring of all our activities, as well as the many collaborative efforts in which we have engaged with you.

With regard to the specific recommendations, we agree that the continued relatively high average lapse time in our health enforcement activities is an issue that should be resolved. It is worth noting that the effect of our longer-than-average lapse time on actual worker protection is muted by Oregon's unique requirement that serious violations be abated even during an appeal. However, we do not dispute that our health lapse time is higher than it should be and that it should be reduced to a level at or below the national average.

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As I have indicated in our previous conversations, we will not achieve that reduction during the current federal fiscal year (which ends, as you know, at the end of this month). But during FFY 2011, we expect to achieve an average lapse time that is equal to or lower than the current federal average.

Our response to the other recommendation is somewhat more complicated. We agree that we can use our penalty authority and its resulting deterrent effect more effectively than is the current case. As you know, we are in the midst of developing a rulemaking proposal that would change our penalty rules in an effort to increase their effectiveness, and we expect to have those rules in place before the middle of FFY 2011. Based on our present analysis, we expect those changes to have the overall effect of increasing our penalties between 40 and 50 percent on average, although a simple increase in the average penalties is not the intended purpose of the rulemaking.

The purpose of this review is to enhance the effectiveness of our penalties. We are not convinced that the average penalty for a first-time serious violation is the only – or even the primary – measure of the effectiveness of the deterrent effect created by our enforcement activities.

As an example, any meaningful analysis of enforcement deterrence must take into account not only the size of the potential penalty but also the likelihood that a violation will in fact be identified. Given Oregon OSHA's highest enforcement presence in the country year after year, the effect of our inspections is likely to be more significant than if we were issuing similar penalties but maintaining only the average federal enforcement presence.

As a further example, because of the abatement requirement I already mentioned, our initial penalties are not subject to reduction simply to ensure abatement of serious violations, as is the case in federal jurisdiction and in every state plan in the country.

I will mention only one other factor as part of this admittedly abbreviated discussion of what can be a very complex issue. In evaluating the effectiveness of penalties, those of us in occupational health and safety often make the point that serious violations are those that can cause serious injury, illness or death. It is worth noting that not all serious violations, however, create a meaningful risk of death. In Oregon's case, we endeavor to identify those "death" violations and subject them to a separate penalty calculation. In the coming year, we plan to make more effective use of that provision in our existing rules. While that will have an incidental impact on the overall average penalty (perhaps as much as 25 percent), it will have a much more significant impact on the effectiveness of our penalties in focusing employer attention on those violations we most want to prevent.

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Thank you, again, for the opportunity to comment. But more important, thank you, again, for the spirit of collaboration and constructive oversight that has informed all of our interaction over the years. The workers of the state and region are served best when we work together toward the common goal of keeping them safe from those hazards that are most likely to result in serious injury, illness and death.

If you have any questions or wish further information, please let me know.

Sincerely,

Michael Wood, CSP
Administrator
Oregon Department of Business and Consumer Services
Occupational Safety and Health Division (Oregon OSHA)

Cc: Steve Witt
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