

Response to FFY 2009 E-FAME Recommendations
Oregon OSHA
October 29, 2010

Health Enforcement Lapse Time

In relation to the recommendation regarding health enforcement lapse time, Oregon OSHA will (as we previously advised federal OSHA) correct this issue during the current federal fiscal year. We will do this by focused attention on eliminating unnecessary delays in health enforcement activities containing violations, which we expect to allow us to meet the current national average throughout FFY 2011. As noted previously, the impact of our higher-than-average lapse time on worker protection is likely to be significantly mitigated by the Oregon-unique requirement that serious violations be abated even during a pending appeal.

Effective Use of Penalties

In relation to the recommendation regarding penalty amounts, we agree that our penalties can more effectively promote deterrence and can more effectively incentivize desired employer behavior, and we are in the midst of developing a proposed change to our rules on penalty assessments and calculations. As part of that proposed rulemaking, we expect to propose increased penalties for larger employers (primarily by increasing the gravity-based penalty amounts), elimination of our sizable reductions for immediate abatement and for a one-year lower-than-average DART rate, and reductions for good faith and for an employer's overall history of compliance (as well as increases for poor faith and for a poor overall compliance history).

Although we do not agree that the average penalty for a first-time serious violation is a particularly good indicator of penalty effectiveness, we do believe that our changes we will propose to enhance our enforcement effectiveness are likely to increase the overall average somewhat (probably in the neighborhood of 40 to 50 percent).

We expect to file a formal proposal in December 2010, with public hearings and an evaluation of public comments during early 2011. We expect to make the necessary decisions that will allow us to adopt a final proposal to take effect by July 2011.