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MEMORANDUM FOR: REGIONAL ADMINISTRATORS

FROM: 
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SUBJECT: Administrative Enhancements to OSHA's Penalty Policies

Last year, the Occupational Safety and Health Administration assembled a work group to evaluate the Agency's penalty policies. The general consensus of the group was that the Agency's penalties are too low to have an adequate deterrent effect. Based on the group's findings and recommendations, several administrative changes to the penalty calculation system outlined in the Field Operations Manual (FOM) are being made.

These administrative enhancements will become effective in the next several months, allowing adequate time for affected OSHA personnel to become familiar with the changes and receive training. Some changes will require advanced reprogramming of the IMIS and development for the new OSHA Information System (OIS) scheduled to launch in October of 2010. The anticipated changes are outlined below.

History Reduction

The time frame for considering an employer's history of violations will expand from three years to five years. An employer who has been inspected by OSHA within the previous five years and has no serious, willful, repeat, or failure-to-abate violations will receive a 10 percent reduction for history.

History Increase

An employer that has been cited by OSHA for any high gravity serious, willful, repeat, or failure-to-abate violation within the previous five years will receive a 10 percent **increase** in their penalty, up to the statutory maximum. Employers who have not been inspected and employers who have received citations for serious violations that were not high gravity will receive neither a reduction nor an increase for history.

Repeat Violations

The time period for repeated violations will also be increased from three to five years. Area Directors may continue to apply a size reduction to the penalty, as appropriate, after considering the need for a deterrent effect.

Area Director and Informal Conference Considerations

When circumstances warrant, Area Directors will retain the authority to determine if a size or history reduction should be granted. If an Area Director believes that imposing the full gravity-based penalty is necessary to achieve the appropriate deterrent effect, he or she may do so after fully documenting the rationale in the case file.

Area Directors will be authorized to offer up to a 30 percent penalty reduction to employers at an informal conference; any reduction over 30 percent will have to be approved by the Regional Administrator. Area Directors will also be authorized to offer an employer with 250 or fewer employees an additional 20 percent reduction if that employer agrees to retain an outside safety and health consultant.

Furthermore, the Agency will no longer allow penalty adjustments to an employer at an informal conference where the employer has an outstanding penalty balance owed to OSHA for the establishment in question or any other location. However, if the employer is on a penalty payment plan and is making timely payments, this provision would not apply.

Expedited Informal Settlement Agreements

Area Offices utilizing expedited settlement agreements will generally be limited to offering a 30 percent reduction. If the employer commits to hiring an outside consultant, the Area Director may grant an additional 20% reduction.

Severe Violator Enforcement Program (SVEP) Violations

Where circumstances warrant, at the discretion of the Area Director, high gravity serious violations related to standards identified in the SVEP will no longer need to be grouped or combined, but can be cited as separate violations, each with its own proposed penalty. Furthermore, for individual violations for hazards identified in the SVEP, Area Directors must consider the adequacy of the proposed penalty and may, as appropriate, limit adjustment for good faith, history, or size when necessary to achieve the appropriate deterrent effect. The rationale for limited adjustments must be fully documented in the case file.

Gravity-Based Penalty (GBP)

OSHA will be adopting a gravity-based penalty determination that provides for a gravity-based penalty between \$3,000 and \$7,000, as described below.

Severity	Probability	GBP	Gravity
High	Greater	\$7,000	High
Medium	Greater	\$6,000	Moderate
Low	Greater	\$5,000	Moderate
High	Lesser	\$5,000	Moderate
Medium	Lesser	\$4,000	Moderate
Low	Lesser	\$3,000	Low

Size Reduction

The Agency will be adopting the new penalty reduction structure for size illustrated below, allowing for penalty reduction between 10 and 40 percent for employers with less than 250 employees. No size reduction will be applied for employers with 251 or more employees.

Employees	Percent Reduction
1-25	40
26-100	30
101-250	10
251 or more	None

Good Faith

The current good faith procedures in the FOM will be retained. A penalty reduction is permitted in recognition of an employer's effort to implement an effective workplace safety and health management system. Employers must have a safety and health program in place to get any good faith reduction; furthermore, good faith reductions are not allowed in the cases of high gravity serious, willful, repeat, or failure-to-abate violations.

The 15% Quick-Fix reduction, which is currently allowed as an abatement incentive program meant to encourage employers to immediately abate hazards found during an inspection, will also be retained. However, the 10% reduction for employers with a strategic partnership agreement will be eliminated.

Increase Proposed Minimum Penalties

The minimum proposed penalty for a serious violation will be increased to \$500. When the proposed penalty for a serious violation would amount to less than \$500, a \$500 penalty will be proposed for that violation. The proposed minimum penalty for a posting

violation will increase to \$250 if the company was previously provided a poster by OSHA.

Additional Administrative Modifications to the Penalty Calculation Policy

Final penalties will be calculated serially, unlike the present practice in which all of the penalty reductions are added and then the total percentage is multiplied by the gravity-based penalty (GBP) to arrive at the proposed penalty. The penalty adjustment factors will be applied serially as follows: History, Good Faith, Quick-Fix and Size.

Sample Moderate Gravity Penalty Comparison: Summed versus Serially Calculation

Sample Data	Summed	Serially*
High/Lesser	\$5,000	\$5,000
History (10%)		\$4,500 -10%
Good Faith (15%)		\$3,825 - 15%
Quick Fix (15%)		\$3,251 - 15%
Size (30%)	10% + 15% + 15% + 30% = 70%	\$2,275 - 30%
Result	\$1,500	\$2,275 [†]

[†] - Results in an increase of approximately 50%

* - No proposed penalty shall exceed the statutory limit for a serious violation or \$7,000.

Conclusion

These changes will serve to generally increase the overall dollar amount of all penalties. Furthermore, the average penalty for a serious violation will increase from approximately \$1,000 to an average of \$3,000 to \$4,000. The Agency hopes that higher penalty amounts will provide a greater deterrent and further encourage employers to furnish safe and health workplaces for their employees. In the immediate future, OSHA will focus on outreach in preparation of implementing this new penalty policy. The enhancements outlined above will become effective over the next several months, and the FOM will be revised to reflect the new policy.

These changes will establish general agency policy and will not preclude the agency from assessing a different penalty where appropriate under The Act in light of all the circumstances, in a particular case.