

Chapter 3.2. California Occupational Safety and Health Regulations (CAL/OSHA)
Subchapter 1. Regulations of the Director of Industrial Relations
Article 3. Citation, Notice, Special Order, Order to Take Special Action, Notice of NO Violations After Investigation: Procedures

§ 332.4. Posting of Citation, Special Order, Order to Take Special Action, and Notice of No Violation After Investigation.

Citations issued pursuant to Labor Code Section 6317, Special Orders or Orders to Take Special Action issued pursuant to Labor Code Section 6308, and Notices of No Violation After Investigation issued pursuant to Labor Code Section 6318, or copies thereof, shall be posted at or near the referenced site of the violation or condition giving rise to the citation or order **unless the employer demonstrates such posting is infeasible, and in a conspicuous place or in places where notices to employees are customarily posted or provided.** The posted Citation, Special Order, Order to Take Special Action, or Notice of No Violation After Investigation shall be positioned so as to be easily read by employees working nearby. All postings shall be maintained for a period of three working days or until the unsafe condition is abated, whichever is longer.

NOTE: Authority cited: Sections 54, 55, 6308 and 6318, Labor Code. Reference: Sections 6305, 6308, 6317 and 6318, Labor Code.

A WEEKLY PUBLICATION FOR THE OCCUPATIONAL SAFETY AND HEALTH COMMUNITY

Chapter 3.2. California Occupational Safety and Health Regulations (CAL/OSHA)
Subchapter 1. Regulations of the Director of Industrial Relations
Article 4. Proposed Penalty Procedure

§ 334. Classification of Violations and Definitions.

For purposes of penalty assessments, violations of occupational safety and health standards, violations of California Health and Safety Code Sections 2950 and 25910, orders, special orders and regulations are classified as follows:

(a) Regulatory Violation - is a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc.

(b) General Violation - is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.

(c) Serious Violation.

(1) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious.

(2) For purposes of a serious violation, the "actual hazard" may consist of, among other things:

(A) A serious exposure exceeding an established permissible exposure limit;

(B) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

(3) If the Division establishes a presumption pursuant to ~~subdivision~~section (c)(1) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

(A) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to the employer's:

1. Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards;
2. Procedures for discovering, controlling access to, and correcting the hazard or similar hazards;
3. Supervision of employees exposed or potentially exposed to the cited hazard;
4. Procedures for communicating to employees about the employer's health and safety rules and programs; and
5. Information that the employer wishes to provide, at any time before citations are issued, including, any of the following:
 - a. The employer's explanation of the circumstances surrounding the alleged violative events.
 - b. Why the employer believes a serious violation does not exist.
 - c. Why the employer believes its actions related to the alleged violative events were reasonable and responsible so as to rebut, pursuant to ~~subdivision~~section (c)(3), any presumption established pursuant to ~~subdivision~~section (c)(1).

d. Any other information that the employer wishes to provide.

(B) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(4) For Carcinogens - a "serious violation" is a violation of any standard, order, or special order respecting the use of a carcinogen, as defined in 8 California Code of Regulations 330(f). However, the violation shall not be considered serious if the employer can demonstrate that ~~he~~ they did not, and could not with the exercise of reasonable diligence, know of the presence of the violation or ~~he~~ the employer can demonstrate that the Division should have determined that the violation was minor and resulted in no substantial health hazard.

(d) Repeat Violation - is a violation where the employer has abated or indicated abatement of an earlier violation occurring within the state for which a citation was issued, and upon a later inspection, the Division finds a violation of a substantially similar regulatory requirement and issues a citation within a period of five years immediately following the latest of: (1) the date of the final order affirming the existence of the previous violation cited in the underlying citation; or (2) the date on which the underlying citation became final by operation of law. For violations other than those classified as repeat regulatory, the subsequent violation must involve essentially similar conditions or hazards.

(e) Willful Violation - is a violation where evidence shows that the employer committed an intentional and knowing, as contrasted with inadvertent, violation, and the employer is conscious of the fact that what ~~he~~ the employer is doing constitutes a violation of a safety law; or, even though the employer was not consciously violating a safety law, ~~he~~ the employer was aware that an unsafe or hazardous condition existed and made no reasonable effort to eliminate the condition.

(f) Egregious Violation - is a willful violation, pursuant to subsection (e), where:

(1) The employer has a prior egregious violation that remains in effect as set forth in subsection (4); or

(2) **Within the five years preceding the issuance of a citation for an egregious violation, one or more of the following has been true of the employer or their actions:**

(A) The employer, intentionally, through conscious, voluntary action or inaction, made no reasonable effort to eliminate the known violation.

(B) The employer has a history of:

1. One or more Repeat or Willful violations; or

2. Five or more Serious violations per 100 employees; or

3. Twenty or more General or Regulatory violations per 100 employees.

(C) The employer intentionally disregarded their health and safety responsibilities, such as by failing to maintain an **operative** injury and illness program adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board, **intentionally disregarding** safety and health hazards, or **intentionally disregarding** the **California Occupational Safety and Health Act.**

(D) The employer's conduct, taken as a whole, amounts to clear bad faith in the performance of their duties to comply with occupational safety and health standards.

(E) Within the five years preceding a citation for an egregious violation, the employer has committed more than five violations of any Title 8 standard that have become final determinations, based upon: (1) a final order affirming the existence of the previous violation; or (2) the previous citation becoming final by operation of law.

(F) The violations resulted in worker fatalities, a worksite catastrophe, or five or more injuries or illnesses. For purposes of this **subsection**, "catastrophe" means the inpatient hospitalization, regardless of duration, of three or more employees resulting from an injury, illness, or exposure caused by a workplace hazard or condition.

(G) Within the 12 months immediately preceding the underlying violation, 10% of all employees at the cited worksite sustained workplace injuries or illnesses as defined in section 330, subsection (h).

(3) A citation for an egregious violation shall remain in effect for a period of five years from the latest of the date of the final order affirming the citation, or the date the citation becomes final by operation of law.

(g) Enterprise-wide Violation - there shall be a rebuttable presumption that a violation is enterprise-wide if an employer has **employees at** multiple worksites and either of the following is true:

(1) The employer has a written policy or procedure that **applies to more than one worksite and that** violates Section 25910 of the Health and Safety Code or any standard, rule, order, or regulation established pursuant to Chapter 6 (commencing with Section 140) of Division 1, or Division 5 of the Labor Code.

(2) The Division has evidence of a pattern or practice of the same violation or violations involving more than one of the employer's worksites.

(f)-(h) Abatement Date - is the date by which the employer is allowed and required to correct the condition constituting the violation.

NOTE: Authority cited: Sections 54, 55 and 6319, Labor Code. Reference: Sections 6302(i), 6317, 6317.8, 6319, 6401.7, 6432 and 6712, Labor Code; and Sections **105200** 2950 and 25910, Health and Safety Code.

Chapter 3.2 California Occupational Safety and Health Regulations (CAL/OSHA)
Subchapter 1. Regulations of the Director of Industrial Relations
Article 4. Proposed Penalty Procedure

§ 335. Factors Considered in Assessing Civil Penalties.

In the assessment of civil penalties, the following factors shall be considered:

(a) The Gravity of the Violation--the Division establishes the degree of gravity of General and Serious violations from its findings and evidence obtained during the inspection/investigation, from its files and records, and other records of governmental agencies pertaining to occupational injury, illness or disease. The degree of gravity of General and Serious violations is determined by assessing and evaluating the following criteria:

(1) Severity.

(A) General Violation.

i. When the safety order violated pertains to employee illness or disease, Severity shall be based upon the degree of discomfort, temporary disability and time loss from normal activity (including work) which an employee is likely to suffer as a result of occupational illness or disease which could result from the violation. Depending on the foregoing, Severity shall be rated as follows:

LOW--	No time loss from work or normal activity; or minimum discomfort.
MEDIUM--	Loss of part or all of a day from work or normal activity including time for medical attention; or moderate temporary discomfort.
HIGH--	Loss of more than one day from regular work or normal activity including time for medical attention; or considerable temporary discomfort.

ii. When the safety order violated does not pertain to employee illness or disease, Severity shall be based upon the type and amount of medical treatment likely to be required or which would be appropriate for the type of injury that would most likely result from the violation. Depending on such treatment, Severity shall be rated as follows:

LOW--	Requiring first-aid only.
MEDIUM--	Requiring medical attention but not more than 24-hour hospitalization.
HIGH--	Requiring more than 24-hour hospitalization.

(B) Serious Violation.

The Severity of a Serious violation is considered to be HIGH.

(2) Extent.

i. When the safety order violated pertains to employee illness or disease, Extent shall be based upon the number of employees exposed:

LOW--	1 to 5 employees.
MEDIUM--	6 to 25 employees.
HIGH--	26 or more employees.

ii. When the safety order violated does not pertain to employee illness or disease, Extent shall be based upon the degree to which a safety order is violated. It is related to the ratio of the number of violations of a certain order to the number of possibilities for a violation on the premises or site. It is an indication of how widespread the violation is. Depending on the foregoing, Extent is rated as:

LOW--	When an isolated violation of the standard occurs, or less than 15% of the units are in violation.
MEDIUM--	When occasional violation of the standard occurs or 15-50% of the units are in violation.
HIGH--	When numerous violations of the standard occur, or more than 50% of the units are in violation.

(3) Likelihood.

Likelihood is the probability that injury, illness or disease will occur as a result of the violation. Thus, Likelihood is based on (i) the number of employees exposed to the hazard created by the violation, and (ii) the extent to which the violation has in the past resulted in injury, illness or disease to the employees of the firm and/or industry in general, as shown by experience, available statistics or records. Depending on the above two criteria, Likelihood is rated as: LOW, MODERATE OR HIGH

(b) The Size of the Business of the Employer--is based upon the number of individuals employed at the time of the inspection/investigation. Size of the Business is evaluated based upon the following classifications of the number of persons employed:

- 10 or fewer employees.
- 11 to 25 employees.
- 26 to 60 employees.
- 61 to 100 employees.
- More than 100 employees.

(c) The Good Faith of the Employer--is based upon the quality and extent of the safety program the employer has in effect and operating. It includes the employer's awareness of CAL/OSHA, and any indications of the employer's desire to comply with the Act, by specific displays of accomplishments. Depending on such safety programs and the efforts of the employer to comply with the Act, Good Faith is rated as:

GOOD--	Effective safety program.
FAIR--	Average safety program.
POOR--	No effective safety program.

(d) The History of Previous Violations--is the employer's history of compliance, determined by examining and evaluating the employer's records in the Division's files. Depending on such records, the History of Previous Violations is rated as:

GOOD--	Within the last three <u>five</u> years, no Serious, Repeat, or Willful violations and less than one General or Regulatory violation per 100 employees at the establishment.
FAIR--	Within the last three <u>five</u> years, no Serious, Repeat, or Willful violations and less than 20 General or Regulatory violations per 100 employees at the establishment.
POOR--	Within the last three <u>five</u> years, a <u>one or more</u> Serious, Repeat, or Willful violation or more than 20 General or Regulatory violations per 100 employees at the establishment.

For the purpose of this subsection, ~~establishment and the three five year computation, shall have the same meaning as in Section 334(d) of this Article.~~ **"establishment" means a physical location where business is conducted or where services or industrial operations are performed. Where employers are engaged in activities that are physically dispersed such as construction or transportation, "establishment" also means each location to which employees report each day or workplace where work is performed by an employee. Where employees do not usually work at, or report to, a single establishment, "establishment" also means the location(s) from which the**

employees operate to carry out their activities. Where there is an Enterprise-wide violation, "establishment" is assessed on an enterprise-wide basis.

NOTE: Authority cited: Sections 50.7, 54, 55 and 6319, Labor Code. Reference: Sections 6319, 6425, 6428, 6429, 6430 and 6712, Labor Code; and Section 25910, Health and Safety Code.

Chapter 3.2. California Occupational Safety and Health Regulations (CAL/OSHA)
Subchapter 1. Regulations of the Director of Industrial Relations
Article 4. Proposed Penalty Procedure

§ 336. Assessment of Civil Penalties.

Civil penalties for Regulatory, General, Serious, Repeat, Willful, Egregious, Enterprise-wide, and Failure to Abate violations shall be assessed in the following manner:

(a) Regulatory Violation -

(1) In General - Any employer who commits any Regulatory violation (as provided in Section 334(a) of this article) shall be assessed a civil penalty of up to \$15,873 for each such violation. Except as set forth in parts (2) through (6) of this subsection, a minimum proposed penalty of \$500, representing the gravity of the violation, shall be assessed against employers who commit Regulatory violations. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(2) For Carcinogens - A minimum proposed penalty of \$1,000 for all carcinogen standard regulatory violations, other than reporting use violations, representing the gravity of the violation, shall be assessed against the employers who commit such violations. The proposed penalty shall be adjusted for Size, Good Faith and History; however, an abatement credit shall not be granted.

(3) For Carcinogens Failure to Report Use. Any employer who violates a reporting requirement respecting the use of a carcinogen as defined in Title 8 of the California Code of Regulations section 330(f), shall be assessed a minimum proposed civil penalty of \$2,500. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(4) For Violation of Permit or Registration Requirements. Any employer who violates the permit requirements of article 2, Permits - Excavations, Trenches, Construction and Demolition, and The Underground Use of Diesel Engines in Work in Mines and Tunnels, commencing with section 341 of Title 8 of the California Code of Regulations, or the Registration requirements of article 2.5, Registration -Asbestos-Related Work commencing with section 341.6 of Title 8 of the California Code of Regulations, shall be assessed a minimum proposed civil penalty of \$1,250. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(5) For Violation of Elevator Permit and Posting Requirements. Any person owning or having custody, management, or operation of an elevator who operates any such elevator without a valid permit, or who fails to post the permit as required, may be assessed a civil penalty pursuant to the provisions of this article of up to \$1000.

(6) For Failure to Report Serious Injury or Illness, or Death of an Employee - Any employer who fails to timely report an employee's injury or illness, or death, in violation of section 342(a) of Title 8 of the California Code of Regulations, shall be assessed a minimum penalty of \$5,000.

(b) General Violation - Any employer who violates any occupational safety and health standard, order or special order and such violation is determined to be a General violation (as provided in section 334(b) of this article) may be assessed a civil penalty of up to \$15,873 for each such violation.

Gravity of a General Violation - The Base Penalty of a General violation is determined by evaluating Severity (as provided in section 335(a)(1)(A) of this article). If the Severity is:

LOW -	The Base Penalty shall be \$1,000.
MEDIUM -	The Base Penalty shall be \$1,500.
HIGH -	The Base Penalty shall be \$2,000.

The Base Penalty for the General violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW -	25% of the Base Penalty shall be subtracted.
MEDIUM -	No adjustment shall be made.
HIGH -	25% of the Base Penalty shall be added.

The Base Penalty for the General violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW -	25% of the Base Penalty shall be subtracted.
MEDIUM -	No adjustment shall be made.
HIGH -	25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(c) Serious Violation

(1) In General - Any employer who violates any occupational safety and health standard, order, or special order, and such violation is determined to be a Serious violation (as provided in section 334(c)(1) of this article) shall be assessed a civil penalty of up to \$25,000 for each such violation. Because of the extreme gravity of a Serious violation an initial base penalty of \$18,000 shall be assessed.

The Base Penalty for the Serious violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW -	25% of the Base Penalty shall be subtracted.
MEDIUM -	No adjustment shall be made.

HIGH -	25% of the Base Penalty shall be added.
--------	---

The Base Penalty for the Serious violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW -	25% of the Base Penalty shall be subtracted.
MEDIUM -	No adjustment shall be made.
HIGH -	25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(2) Serious Violation Causing Death or Serious Injury, Illness or Exposure -- If the employer commits a Serious violation and the Division has determined that the violation caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be reduced pursuant to this subsection, except the penalty may be reduced for Size as set forth in subsection (d)(1) of this section. The penalty shall not exceed \$25,000. **For the purpose of this section, "Accident-Related" means a serious violation that results in a serious injury, illness, exposure, or death.**

(3) Operation of an Elevator in an Unsafe Condition or in Violation of an Order Prohibiting Use. Any person owning or having custody, management or operation of an elevator who operates or permits the operation of the elevator in a condition which is dangerous to life or the safety of any person, or who operates or permits the operation of the elevator in violation of any Order Prohibiting Use issued by the Division, may be assessed a civil penalty pursuant to the provisions of this article of up to \$2000.

A WEEKLY PUBLICATION FOR THE OCCUPATIONAL SAFETY AND HEALTH COMMUNITY

(d) Further Adjustment of Regulatory, General, ~~and Serious, and Enterprise-wide~~ Violations - Subject to the provisions of parts (5) through (9) of this subsection, the Gravity-based Penalty established under either subsection (a), (b) or (c) of this section, shall be appropriately adjusted by giving due consideration to the following factors:

(1) The Size of the Business If the Size of the Business (as provided under section 335(b) of this article) is:

10 or fewer employees	- 40% of the Gravity-based Penalty shall be subtracted.
11-25 employees	- 30% of the Gravity-based Penalty shall be subtracted.
26-60 employees	- 20% of the Gravity-based Penalty shall be subtracted.
61-100 employees	- 10% of the Gravity-based Penalty shall be subtracted.
More than 100 employees	- No adjustment shall be made.

(2) The Good Faith of the Employer -If the Good Faith of the Employer (as provided under section 335(c) of this article) is:

GOOD -	30% of the Gravity-based Penalty shall be subtracted.
--------	---

FAIR -	15% of the Gravity-based Penalty shall be subtracted.
POOR -	No adjustment shall be made.

(3) The History of Previous Violations - If the employer's History of Compliance (as provided under section 335(d) of this article) is:

GOOD -	10% of the Gravity-based Penalty shall be subtracted.
FAIR -	5% of the Gravity-based Penalty shall be subtracted.
POOR -	No adjustment shall be made.

Following the preceding adjustments of the Gravity-based Penalty, the resultant penalty is termed Adjusted Penalty.

(4) If an employer cited for a violation of a safety and health provision within title 8 of the California Code of Regulations was, at the time of citation, making a good faith effort to abate the alleged violation, pursuant to written recommendations of a Consultant of the CAL/OSHA Consultation Service, the following penalty adjustments may apply:

(A) General Violation. All penalties assessed for such General violations may be waived by the Division.

(B) Serious Violation. All penalties for such Serious violations may be subject to an additional adjustment reducing the proposed penalty 50%.

(5) Serious Violations Respecting the Use of a Carcinogen - The penalty for any Serious violation respecting the use of a carcinogen ~~shall not be as set forth in subsection (c)(2) of this section is not~~ subject to adjustment pursuant to this subsection **and shall not or** be otherwise reduced.

(6) Regulatory Violations of the Permit and Registration Requirements - The minimum penalty for any Regulatory violation of the permit or registration requirements as set forth in subsection (a)(4) of this section is \$250.

(7) Serious Violations Causing Death or Serious Injury, Illness or Exposure - Subject to the provisions of subsection (c)(2) of this section, the penalty for any Serious violation determined by the Division to have caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, shall not be adjusted pursuant to this subsection, except for Size set forth in part (1) of this subsection.

(8) Injury Prevention Program - The penalty for any Serious violation shall not be subject to adjustment pursuant to this subsection other than for Size as set forth in part (1) of this subsection where the employer does not have an operative injury prevention program as set forth in Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(9) False Declarations of Abatement - Subject to the provisions of subsection (e) of this section, where it is determined after reinspection that the employer has not complied with the abatement requirements of the Division and employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in part (1) of this subsection.

(10) No civil penalty shall be assessed against any new employer for a period of one year after the date the new employer establishes a business in the state for a regulatory or general violation of the Injury and Illness Prevention Program Standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board, if the employer has made a good faith effort to comply with the requirement set forth therein.

(11) No civil penalty shall be assessed against an employer who adopts, posts, and implements in good faith the Model Injury and Illness Prevention Program for Non-High-Hazard Employment prepared by the Division for a first violation of the Injury and Illness Prevention Program standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(12) For an employer who commits a repeat violation (as provided under section 334(d) of this article), the penalty shall not be subject to adjustment pursuant to this subsection, other than for Size as set forth in part (1) of this subsection.

(13) For an employer who commits an Enterprise-wide violation (as provided under section 334(g) of this article), the penalty shall not be subject to adjustment pursuant to this subsection, other than for Size as set forth in part (1) of this subsection.

(e) Abatement Credit for General and Serious Violations –

(1) The Adjusted Penalty for General violations, other than those classified as "Enterprise-wide General," is reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The resultant penalty is termed Proposed Penalty. Violations classified as "Egregious General," "Repeat General" or "Willful General" are not subject to an abatement credit.

(2) For Enterprise-wide General and Serious violations not listed in paragraph (3), ~~the Division shall not grant a 50% abatement credit unless the employer has done either one of the following~~ **the Division shall grant a 50% abatement credit if the employer has done either one of the following:**

(A) Abated the ~~Serious~~ violation at the time of the initial or a subsequent visit during an inspection and prior to the issuance of a citation.

(B) Submitted a statement signed under penalty of perjury, together with supporting evidence when necessary to prove abatement, that the employer has abated the ~~Serious~~ violation within the period fixed for abatement in the citation. The signed statement and supporting evidence must be received within 10 working days after the end of the period fixed in the citation for abatement.

(3) The following types of Serious violations are not subject to an abatement credit:

(A) Serious violations for which extent and likelihood are rated high;

(B) ~~Serious violations designated~~ classified as "Egregious Serious," "Repeat Serious" or "Willful Serious;"

(C) Serious violations respecting the use of a carcinogen; and

(D) Serious violations causing death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302.

(f) ~~Penalty for Failure to Abate Regulatory, General or Serious~~ Penalty for Failure to Abate Regulatory, General or Enterprise-wide Violations –

If the employer fails to abate the violation by the date permitted for its correction or fails to submit to the Division a signed statement of abatement of a violation within ten working days of the date set by the Division for correction of the violative condition, any abatement credit extended pursuant to subsection (e) of this Section shall be rescinded and this amount assessed as part of the failure to abate penalty. In addition, a penalty shall be assessed that is based upon the initial Gravity-based penalty for each calendar day that the previously cited violation continues unabated after expiration of the abatement period. Subject to the provisions of part (1) hereof, the Gravity-based penalty is reduced by the reevaluated adjustment factors. The adjustment factors of Size, Good Faith, and History shall be determined by evaluation of the circumstances at the time of the subsequent inspection when the failure to abate is discovered. For Enterprise-wide violations, if the employer fails to timely

abate the violative condition at any worksite covered by the Enterprise-wide citation as set forth in subsection (e)(3), a separate penalty **shall be assessed for each worksite where the employer failed to timely abate.** The daily additional penalty for failure to abate a violation shall not exceed \$15,000.

Limitations:

(1) Except (A) where the gravity of the violation is high and exposure to employees is continuous, or (B) the employer has exhibited a high degree of negligence in failing to correct the violation, the daily penalty for failure to abate a Regulatory or General violation may be further reduced up to 90% for the first 120 days the violation continues to exist and up to 50% thereafter where the violation does not bear a direct relationship on employee health and safety. The daily penalty for a Serious violation may be reduced up to 50% where the adjustment factors calculated pursuant to subsection (c) of this section are Low and the History and Good Faith calculated pursuant to subsection (d) of this section are Good.

(2) When a violation consisted of a number of instances and upon subsequent inspection some instances are found to have been abated and others have not, the daily penalty shall be calculated in proportion to the extent that the violation has been abated.

(3) Failure to Abate a Serious Violation Causing Death or Serious Injury, Illness or Exposure - If the employer fails to abate a Serious violation and the Division has determined that the failure to abate caused death or serious injury, illness, or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in subsection (d)(1) of this section.

(4) Failure to Abate a Serious Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury - If the employer fails to abate a serious violation of a crane standard, order, or special order and the Division has determined that the failure to abate caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$14,000 for each calendar day. The penalty is not subject to adjustment.

(5) Failure to Abate an Enterprise-wide Violation - If, upon subsequent inspection, one or more instances of an Enterprise-wide violation are found to have been abated and others have not at any of the worksites covered by the Enterprise-wide citation, the daily penalty shall be calculated in proportion to the extent that the Enterprise-wide violation has been abated. **For example, if the Enterprise-wide violation is based on ten (10) worksites and only eight (8) of the ten (10) worksites abated, the daily penalty shall be calculated based on the two (2) worksites that failed to abate.**

(6) False Declaration of Abatement - If it is determined after reinspection that the employer has not complied with the abatement requirements of the Division, and the employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size pursuant to part (1) of subsection (d) of this section.

(g) Repeat Violation -

(1) In General - If a Regulatory, General, or Serious violation is repeated (as provided under section 334(d) of this article) the Proposed Penalty is adjusted upward as follows:
1st repeat - the Proposed Penalty is multiplied by two.

2nd repeat - the Proposed Penalty is multiplied by four.

3rd repeat - the Proposed Penalty is multiplied by ten.

The resultant penalty shall not exceed \$158,727.

(2) For Carcinogens - If a Serious violation respecting the use of a carcinogen or a Regulatory violation concerning a reporting requirement respecting the use of a carcinogen is repeated (as provided in section 334(d) of this article), the total civil penalty shall be as follows:

(A) For repeated Regulatory violations concerning a reporting requirement.

1st repeat - \$5,000

2nd repeat - \$10,000

3rd repeat - \$20,000

(B) For repeated Serious violations respecting the use of a carcinogen.

1st repeat - \$10,000

2nd repeat - \$20,000

3rd repeat - \$40,000

These penalties are not subject to adjustment.

(3) Repeated Violation Causing Death or Serious Injury, Illness or Exposure - The computation of the Proposed Penalty for a repeated violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(h) Willful Violation - If a Regulatory, General, or Serious violation, including those classified as Enterprise-wide, is determined to be willful (as provided under section 334(e) of this article) the Proposed Penalty is adjusted upward as follows:

Regulatory, General and Serious - the Proposed Penalty is multiplied by five. However, the penalty for any willful violation shall not be less than \$11,337 and shall not exceed \$158,727.

(1) Willful Violation Causing Death or Serious Injury, Illness or Exposure - The computation of the Proposed Penalty for a willful violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(i) Egregious Violation - If a Willful violation is determined to be egregious (as provided under section 334(f) of this article), the Division shall issue a separate citation with a separate Proposed Penalty calculated pursuant to subsection (h) of this section for each instance of an employee exposed to that violation. **For purposes of this section "each instance" means a single employee's exposure to the violation. For example, if a violation exposes ten (10) employees to the hazard, there are ten (10) instances with ten (10) separate penalties.**

~~(i)-(j)~~ Serious Repeated or Willful Repeated Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury - If the employer commits a serious repeated or willful repeated violation of a crane standard, order, or special order, and the Division has

determined that the violation caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$140,000. This penalty is not subject to adjustment.

(k) Enterprise-wide violations –

(1) The Proposed Penalty is multiplied by the number of worksites covered by the Enterprise-wide citation at the time of the inspection.

(2) When multiplying the Proposed Penalty by the number of worksites covered, **only the classification or characterization that applies to each and every violation shall be used for the computation of the Proposed Penalty. Any Repeat, Willful, or Egregious classification, Accident-Related characterization, or any abatement credit, that does not apply to each and every violation, shall not be used to calculate the Proposed Penalty. For example, an employer has three covered worksites. At one worksite, there is a Serious, Accident-Related, violation. At the other two worksites, there are two Serious violations respectively. To calculate the Proposed Penalty, the Serious classification is used for the computation. However, if at all three covered worksites there are Serious, Accident-Related, violations, respectively, the Serious, Accident-Related, classification and characterization are used to calculate the Proposed Penalty.**

(3) When multiplying the Proposed Penalty by the number of worksites covered, (1) there will be a presumption that Severity and Extent is Medium and Likelihood is Moderate and (2) the adjustment factors of Good Faith, Size, and History will be assessed based on the worksites covered. The Division may, in its discretion, depart from the preceding criteria based on the facts and information gathered during the investigation.

A WEEKLY PUBLICATION FOR THE OCCUPATIONAL SAFETY AND HEALTH COMMUNITY

The resultant penalty shall not exceed \$158,727.

~~(j)~~(l) Rounding of the Fractions Amounts of the civil penalties are rounded down to the next whole dollar during the calculation stages, and final figures are adjusted downward to the next lower five dollar (\$5) value.

~~(k)~~(m) Multiple Violations Pertaining To A Single Hazard. When a single hazard is the subject matter of multiple violations resulting in civil penalties, the Division may, in its discretion, depart from the preceding criteria to mitigate the cumulative effect of such penalties.

(1) This subsection does not apply to any penalty assessed for a Serious, Willful, Egregious, or Repeated violation or a failure to abate a Serious violation where such violation or violations have been determined by the Division to have caused death or serious injury, illness or exposure pursuant to Labor Code section 6302. This subsection does not apply to any Regulatory, General or Serious violation where the employer does not have an operative injury prevention program as set forth in subsection (d) of this section.

NOTE: Authority cited: Sections 50.7, 54, 55, 6319, 6319.3, 6401.7 and 9060, Labor Code. Reference: Sections 6314.5, 6302, 6317, 6317.8, 6318, 6319, 6320, 6401.7, 6409.1, 6427-6432, 6434, 6712, 7320, 7321, 7321.5, 7381 and 9060, Labor Code; and Section 25910, Health and Safety Code.