

PENALTIES

General Penalty Policy

- I. The penalty structure in Section 27.1 of the IOSH Act is designed primarily to provide an incentive for preventing or correcting violations voluntarily, not only to the cited employer, but to other employers. While penalties are not designed as punishment for violations, Congress has made clear its intent that penalty amounts should be sufficient to serve as a deterrent to violations. Proposed penalties, therefore, serve the Act's intent and criteria approved for such penalties by the Commissioner of Labor are based on effectuating this purpose.

The penalty structure described in this chapter is part of IOSHA's general enforcement policy and shall normally be applied as set forth below. A Division Director can exercise discretion to depart from the penalty policy in cases where penalty adjustments do not advance the deterrent goal of the Act. The application of penalty adjustments can therefore result in the issuance of citations with all or zero adjustments. An inspection should maintain consistent penalty adjustments throughout all recommended citations.

A decision not to apply the penalty adjustments should normally be based on consideration of one or more of the factors listed below. However, this list is not intended to be exhaustive. If the decision not to apply the penalty adjustments is based on a consideration other than the factors listed below, the decision must be fully explained in the case file and approved by the Deputy Commissioner or his/her designee. The factors to be considered include:

- The proposed citations are related to a fatality/catastrophe.
- The employer has received a knowing or repeat violation within the past five years related to a fatality.
- The employer has failed to report a fatality, inpatient hospitalization, amputation, or loss of an eye pursuant to the requirements of 29 CFR 1904.39.
- The employer is currently on the Severe Violator Enforcement List (SVEP).
- The proposed citations meet the requirements for inclusion in SVEP.

- The proposed citations are being considered for an egregious case.
- The employer has numerous recordkeeping violations related to a large number or rate of injuries and illnesses at the establishment.
- The proposed failure to abate notification is based on a previous citation for which the employer failed to submit abatement verification.
- The employer has been referred to debt collection for past unpaid IOSHA penalties.

II. Civil Penalties

A. Authority for Civil Penalties

Section 27.1 of the Act provides the Commissioner with the statutory authority to propose civil penalties for violations of the Act. Civil penalties advance the purposes of the Act by encouraging compliance and deterring violations. **Proposed penalties** are the penalty amounts IOSHA issues with citations.

1. Section 27.1(a)(7) provides that an employer who knowingly violates the Act, where any such violation can reasonably be determined to have contributed to an employee fatality, shall be assessed a civil penalty of not less than \$9,472 for each violation and may be assessed a civil penalty of up to \$132,598 for each violation.
2. Section 27.1(a)(5) and (a)(6) of the Act provide that any employer who repeatedly violates the Act or knowingly violates it, where any such violation cannot easily be determined to have contributed to an employee fatality, may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each knowing violation.
3. Section 27.1(a)(2) provides that any employer who has received a citation for an alleged violation of the Act which is determined to be of a serious nature shall be assessed a civil penalty of up to \$7,000 for each violation.
4. Section 27.1(a)(1) provides that, when the violation is specifically determined not to be of a serious nature, a proposed civil penalty of up to \$7,000 may be assessed for each violation.
5. Section 27.1(a)(3) provides that any employer who fails to correct a violation for which a citation has been issued, may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.
6. Section 27.1(a)(4) provides that, when a violation of a posting requirement is cited, a civil penalty of up to \$7,000 shall be assessed for each violation.

B. Appropriations Act Restrictions

In providing funding for OSHA, Congress has placed restrictions on enforcement activities regarding two categories of employers: small farming operations and small employers in low-hazard industries. The Appropriations Act contains limits for OSH Act activities on a year-by-year basis.

NOTE: See [CPL 02-00-051](#), *Enforcement Exemptions and Limitations under the Appropriations Act*, issued May 28, 1998, for additional information. Appendix A of that directive contains the list of low-hazard industries, which is updated annually.

C. Minimum Penalties

The following policies apply:

1. The proposed penalty for any knowing violation, where any such violation cannot easily be determined to have contributed to an employee fatality, shall not be less than \$5,000. The \$5,000 penalty is a statutory minimum and not subject to administrative discretion. This minimum penalty applies to all such knowing violations, whether Serious or Non-Serious.
2. The proposed penalty for any knowing violation, where any such violation can easily be determined to have contributed to an employee fatality, shall not be less than \$9,472. The \$9,472 penalty is a statutory minimum and not subject to administrative discretion. This minimum penalty applies to all such knowing violations, whether Serious or Non-Serious.
3. The proposed penalty for an inspection of a fatality shall start at \$7,000 and then the deductions (if any are recommended) shall be taken from there.
4. When the proposed penalty for a Serious violation (citation item) would amount to less than \$100, a \$100 penalty shall be proposed for that violation.
5. When the proposed penalty for a Non-Serious violation (citation item), or a regulatory violation other than a posting violation, would amount to less than \$100, no penalty shall be proposed for that violation.
6. If, however, there is a citation for a posting violation, a penalty shall be proposed even if less than \$100 since penalties for such violations are mandatory under the Act.

D. Maximum Penalties

The civil penalty amounts included in Section 27.1 are generally maximum amounts before any permissible reductions are taken.

Table 6-1 below summarizes the maximum amounts for proposed civil penalties:

Table 6-1: Maximum Amounts for Civil Penalties

Type of Violation	Penalty Maximum
Serious	\$7,000 per violation
Non-Serious	\$7,000 per violation
Knowing (non-fatality related) or Repeat	\$70,000 per violation
Knowing in conjunction with a workplace fatality where any such violation can reasonably be determined to have contributed to the employee fatality	\$132,598 per violation
Posting Requirements	\$7,000 per violation
Failure to Abate	\$7,000 per day unabated beyond the abatement date [generally limited to 30 days maximum]

III. Penalty Factors

Penalties shall be assessed giving due consideration to four factors:

- The **gravity** of the violation
- The **size** of the employer’s business
- The **good faith efforts** of the employer
- The employer’s **history** of previous violations

A. Gravity of Violation

The gravity of the violation is the **primary consideration** in determining penalty amounts. Gravity shall be the basis for calculating the basic penalty for Serious and Other-Than-Serious violations. To determine the gravity of a violation, the following two assessments shall be made:

- The **severity** of the injury or illness which could result from the alleged violation.
- The **probability** that an injury or illness could occur as a result of the alleged violation.

1. Severity Assessment

The first step in the classification of an alleged violation as Serious or Other-Than-Serious is based on the severity of the potential injury or illness. The following categories shall be considered in assessing the severity of potential injuries or illnesses:

- a. Serious
 - i. High Severity: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.
 - ii. Medium Severity: Injuries or temporary, reversible illnesses resulting in hospitalization for a variable but limited period of disability.
 - iii. Low Severity: Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.

- b. Non-Serious

Minimal Severity: Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the most serious injury or illness that could reasonably be expected to result from an employee's exposure would not be low, medium, or high severity and would not require medical treatment or cause death or serious physical harm.

2. Probability Assessment

The probability that an injury or illness will result from a hazard has no role in determining the classification of a violation but does affect the amount of the proposed penalty.

- a. Probability shall be categorized either as greater or as lesser.
 - i. Greater Probability: Results when the likelihood that an injury or illness will occur is judged to be relatively high.
 - ii. Lesser Probability: Results when the likelihood that an injury or illness will occur is judged to be relatively low.

- b. How to Determine Probability

The following factors shall be considered, as appropriate, when violations are likely to result in injury or illness:

- i. Number of employees exposed
- ii. Frequency and duration of employee exposure to hazardous conditions, including overexposures to contaminants
- iii. Employee proximity to the hazardous conditions
- iv. Use of appropriate personal protective equipment
- v. Medical surveillance program
- vi. Age of employees

- vii. Training on the recognition and avoidance of the hazardous condition
- viii. Other pertinent working conditions.

EXAMPLE 6-1: Greater probability may include an employee exposed to the identified hazard for four hours a day, five days a week. Lesser probability may be present when an employee is performing a non-routine task with two previous exposures within the previous year and no injuries or illnesses are associated with the identified hazard.

c. Final Probability Assessment

All the factors outlined above shall be considered in determining a final probability assessment.

When adherence to the probability assessment procedures would result in an unreasonably high or low gravity, the assessment may be adjusted at the discretion of the Division Director as appropriate. Such decisions shall be fully explained in the case file.

3. Gravity-Based Penalty

- a. The gravity-based penalty (GBP) for each violation shall be determined by combining the severity assessment and the final probability assessment.
- b. GBP is an unreduced penalty and is calculated in accordance with the procedures below.

NOTE: Throughout the IFOM when the term “unreduced penalty” is used, it is the same as GBP.

4. Serious Violation & GBP

- a. The gravity of a violation is defined by the GBP:
 - i. A **high gravity** violation is one with a GBP of \$7,000 or greater.
 - ii. A **moderate gravity** violation is one with a GBP of \$6,000, \$5,000, \$4,000, or \$3,000.
 - iii. A **low gravity** violation is one with a GBP of \$2,000.
- b. The highest gravity classification (high severity and greater probability) shall normally be reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury or illness.
- c. For Serious violations, the GBP shall be assigned on the basis of the following scale in Table 6-2:

Severity + Probability = GBP

Table 6-2: Serious Violations

Severity	Probability	GBP	Gravity
High	Greater	\$7,000	High
Medium	Greater	\$6,000	Moderate
Low	Greater	\$5,000	Moderate
High	Lesser	\$4,000	Moderate
Medium	Lesser	\$3,000	Moderate
Low	Lesser	\$2,000	Low

5. Non-Serious Violations & GBP

- a. For Non-Serious safety and health violations, there is only minimal severity.
- b. If the Division Director determines that it is appropriate to achieve the necessary deterrent effect, a GBP of \$7,000 may be proposed. Such discretion should be exercised based on the facts of the specific case. The reasons for this determination shall be fully explained in the case file.

Table 6-3: Non-Serious Violations

Severity	Probability	GBP
Minimal	Greater	\$1,000 - \$7,000
Minimal	Lesser	\$0

6. Exception to GBP Calculations

For some cases, a GBP may be assigned without using the severity and the probability assessment procedures outlined in this section when these procedures cannot appropriately be used. In such cases, the assessment assigned and the reasons for doing so shall be fully explained in the case file.

7. Egregious Cases

In egregious cases, violation-by-violation penalties are applied. Such cases shall be handled in accordance with [CPL 02-00-080](#), *Handling of Cases to be*

Proposed for Violation-By-Violation Penalties, dated October 21, 1990. Penalties calculated under this policy shall not be proposed without the concurrence of the Deputy Commissioner.

8. Gravity Calculations for Combined or Grouped Violations

Combined or grouped violations will be considered as one violation with one GBP. The following procedures apply to the calculation of penalties for combined and grouped violations:

NOTE: Multiple violations of a single standard may be **combined** into one citation item. When a hazard is identified which involves interrelated violations of different standards, the violations may be **grouped** into a single item.

a. Combined Violations

The severity and probability assessments for combined violations shall be based on the instance with the highest gravity. It is not necessary to complete the penalty calculations for each instance or sub item of a combined or grouped violation once the instance with the highest gravity is identified.

b. Grouped Violations

The following shall be adhered to:

i. Grouped Severity Assessment

There are two considerations for calculating the severity of grouped violations:

1. The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item; AND
2. If the injury or illness that is reasonably predictable from the grouped items is more serious than that from any single violation item, the more serious injury or illness shall serve as the basis for the calculation of the severity factor.

ii. Grouped Probability Assessment

There are two factors for calculating the probability of grouped violations:

1. The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness; AND

2. If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for the calculation of the probability assessment.

B. Penalty Reduction Factors

1. General

- a. Penalty adjustments will vary depending upon the employer's "size" (maximum number of employees), "good faith," and "history of previous violations."
 - i. A maximum of 70 percent (80 percent for Serious knowing violations) reduction is permitted for **size**.
 - ii. A maximum of 25 percent reduction for **good faith**.
 - iii. 10 percent reduction may be given for **history**.
- b. However, no penalty reduction can be more than 100 percent of the initial assessment. Since these reduction factors are based on the general character of an employer's safety and health performance, they shall be calculated only once for each employer.
- c. After the classification (as Serious or Non-Serious) and the gravity-based penalty have been determined for each violation, the penalty reduction factors (for size, good faith, history) shall be applied subject to the following limitations:
 - i. Penalties proposed for violations classified as **repeated** shall be reduced only for size.
 - ii. Penalties proposed for violations classified as **knowing**, shall be reduced only for size and history.
 - iii. Penalties proposed for **Serious** violations classified as high severity/greater probability **shall be reduced only for size and history**.

2. History Reduction

a. Allowable Percent

A reduction of 10 percent shall be given to employers who have not been cited by OSHA nationwide, or by any State Plan state for any Serious, knowing, or repeated violations in the prior three years.

b. Time Limitation and Final Order

The three-year history of no prior citations (both Federal and State) shall be calculated from the opening conference date of the current inspection.

Only citations that have become a final order of the Board of Safety Review and non-contested final orders (more than 15 days since the receipt of the citations with no Notice of Contest) within the three years immediately before the opening conference date shall be considered.

- c. Reduction Will Not be Given:
 - i. For a repeat violation
 - ii. To employers being cited for failure to certify abatement
 - iii. For violations related to a fatality
 - iv. To employers being cited for failure to notify employees and tagging movable equipment.

3. Good Faith Reduction

A penalty reduction is permitted in recognition of an employer's effort to implement an effective safety and health management system in the workplace. The following apply to reductions for good faith:

- a. Reduction Not Permitted for any of the following:
 - i. High gravity Serious violations
 - ii. Violations related to a fatality
 - iii. Knowing violations: Additionally, where a knowing violation has been documented, no reduction for good faith can be applied to **any** of the violations found during the same inspection.
 - iv. Repeat violations: If a repeat violation is found, no reduction for good faith can be applied to **any** of the violations found during the same inspection.
 - v. Failure-to-Abate violations: No good faith reduction shall be given for **any** violation in the inspection in which the FTA was found.
 - vi. Employers being cited under abatement verification for **failure to certify abatement**.
 - vii. Employers being cited under abatement verification for failure to notify employees and tagging movable equipment.
 - viii. Employer has no safety and health management system, or if there are major deficiencies in the program.
 - ix. Employer has failed to report a fatality, inpatient hospitalization, amputation, or loss of an eye pursuant to the requirements of 29 CFR 1904.39.
- b. Allowable reductions for good faith

A penalty reduction is permitted in recognition of an employer's effort to implement an effective safety and health management system in the workplace. The following apply to reductions for good faith efforts:

i. Twenty-Five Percent (25 percent) Reduction

A 25 percent reduction for "good faith" normally requires a written safety and health management system. In exceptional cases, CSHOs may recommend a full 25 percent reduction for employers with 1-25 employees who have implemented an effective safety and health management system but has not documented it in writing.

To qualify for this reduction, the employer's safety and health management system must provide for:

1. Appropriate management commitment and employee involvement.
2. Worksite analysis for the purpose of hazard identification.
3. Hazard prevention and control measures.
4. Safety and health training.
5. Where **young persons** (i.e., less than 18 years old) are employed, the CSHO's evaluation must consider whether the employer's safety and health management system appropriately addresses the particular needs of such employees, relative to the types of work they perform and the potential hazards to which they may be exposed.
6. Where **persons who speak limited or no English** are employed, the CSHO's evaluation must consider whether the employer's safety and health management system appropriately addresses the particular needs of such employees, relative to the types of work they perform and the potential hazards to which they may be exposed.

NOTE: An example of an effective safety and health management system is given in [Recommended Practices for Safety and Health Programs](#).

ii. Fifteen Percent (15 percent) Reduction

A 15 percent reduction for good faith shall normally be given if the employer has a documented and effective safety and health management system, with only incidental deficiencies.

EXAMPLE 6-2: An acceptable program should include minutes of employee safety and health meetings, documented employee safety

and health training sessions, or any other evidence of measures advancing safety and health in the workplace.

iii. Allowable Percentages.

Only these percentages (15 percent and 25 percent) may be used to reduce penalties due to the employer’s good faith.

4. Size Reduction

a. A maximum penalty reduction of 70 percent is permitted for small employers (80 percent for Serious knowing violations, see [Table 6-6](#)). “Size of employer” shall be calculated on the basis of the maximum number of employees of an employer at **all** workplaces nationwide, including State Plan States, at any one time during the previous 12 months.

b. The rates of reduction to be applied are as follows:

Table 6-4: Size Reduction

Employees	Percent Reduction
1-10	70
11-25	60
26-100	30
101-250	10
251 or more	None

c. When an employer with 1-25 employees has one or more Serious violations of high gravity or a number of Serious violations of moderate gravity indicating a lack of concern for employee safety and health, the CSHO may recommend that only a partial reduction in penalty shall be permitted for size. If the Division Director approves the partial reduction, the justification is to be fully explained in the case file.

5. Total Reduction.

The total reduction will normally be the sum of the reductions for each factor. Table 6-5 provides an overview of the percent of penalty reductions applicable to Serious, Non-Serious, and repeated violations.

6. Penalty Table.

Table 6-5 may be used for determining appropriate reduced penalties for Serious and Non-Serious violations.

Table 6-5: Penalty Table

Percent Reduction	Penalty in Dollars						
	Minimal-Greater	Low-Lessor	Medium-Lessor	High-Lessor	Low-Greater	Medium-Greater	High-Greater
0%	\$1,000	\$2,000	\$3,000	\$4,000	\$5,000	\$6,000	\$7,000
10%	\$900	\$1,800	\$2,700	\$3,600	\$4,500	\$5,400	\$6,300
15%	\$850	\$1,700	\$2,550	\$3,400	\$4,250	\$5,100	\$5,950*
20%	\$800	\$1,600	\$2,400	\$3,200	\$4,000	\$4,800	\$5,600
25%	\$750	\$1,500	\$2,250	\$3,000	\$3,750	\$4,500	\$5,250*
30%	\$700	\$1,400	\$2,100	\$2,800	\$3,500	\$4,200	\$4,900
35%	\$650	\$1,300	\$1,950	\$2,600	\$3,250	\$3,900	\$4,550*
40%	\$600	\$1,200	\$1,800	\$2,400	\$3,000	\$3,600	\$4,200
45%	\$550	\$1,100	\$1,650	\$2,200	\$2,750	\$3,300	\$3,850*
55%	\$450	\$900	\$1,350	\$1,800	\$2,250	\$2,700	\$3,150*
60%	\$400	\$800	\$1,200	\$1,600	\$2,000	\$2,400	\$2,800
65%	\$350	\$700	\$1,050	\$1,400	\$1,750	\$2,100	\$2,450*
70%	\$300	\$600	\$900	\$1,200	\$1,500	\$1,800	\$2,100
75%	\$250	\$500	\$750	\$1,000	\$1,250	\$1,500	\$1,750*
80%	\$200	\$400	\$600	\$800	\$1,000	\$1,200	\$1,400
85%	\$150	\$300	\$450	\$600	\$750	\$900	\$1,050*
95%	\$50	\$100	\$150	\$200	\$250	\$300	\$350

NOTE: Starred (*) figures represent penalty amounts that would not normally be proposed for high gravity Serious violations because no reduction for good faith is made in such cases. They may occasionally be applicable for Non-Serious violations where the Division Director has determined a high unreduced penalty amount to be warranted.

IV. Effect on Penalties if Employer Immediately Corrects

Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of the violation by the CSHO, the employer immediately corrects or initiates steps to abate the hazard.

V. Repeat Violations

A. General

1. Each repeat violation shall be evaluated as Serious or Non-Serious, based on current workplace conditions, and not on hazards found in the prior case.
2. A Gravity-Based Penalty (GBP) shall then be calculated for repeat violations based on facts noted during the current inspection.

3. Only the reduction factor for size, appropriate to the facts at the time of the reinspection, shall be applied.
4. Section 27.1 of the Act provides that an employer who repeatedly violates the Act may be assessed a civil penalty of not more than \$70,000 for each violation.

B. Penalty Increase Factors

The amount of any increase to a proposed penalty for repeat violations shall be determined by the size of the employer's business.

1. Small Employers

For employers with 250 or fewer employees nationwide, the GBP shall be multiplied by a factor of two (2) for the first repeat violation and multiplied by five (5) for the second repeat violation. The GBP may be multiplied by ten (10) in cases where the Division Director determines that it is necessary to achieve the deterrent effect. The reasons for imposing a high multiplier factor shall be explained in the file.

2. Large Employers

For employers with more than 250 employees nationwide, the GBP shall be multiplied by a factor of five (5) for the first repeat violation and, by ten (10) for the second repeat violation.

C. Non-Serious, No Initial Penalty

For a repeat, Non-Serious violation that otherwise would have no initial penalty, a GBP penalty of \$200 shall be proposed for the first repeat violation, \$500 for the second repeat violation, and \$1,000 for a third repetition.

NOTE: These penalties shall not be subject to the Penalty Increase factors as discussed in [Paragraph V.B.](#) of this chapter.

D. Regulatory Violations

1. For calculating the GBP for regulatory violations, see Paragraph [III.A.5.](#) and [Section X.](#)
2. For repeated instances of regulatory violations, the initial penalty shall be multiplied by two (2) for the first repeat violation and multiplied by five (5) for the second repeat violation. If the Division Director determines that it is necessary to achieve the proper deterrent effect, the initial penalty may be multiplied by ten (10).

VI. Knowing Violations

Section 27.1(a)(7) of the Act provides that an employer who knowingly violates the Act, where any such violation can easily be determined to have contributed to an employee fatality, may be assessed a civil penalty of not more than \$132,598 for each

violation, but not less than \$9,472 for each violation. However, Section 27.1(a)(6) of the Act provides that an employer who knowingly violates the Act, where any such violation cannot easily be determined to have contributed to an employee fatality, may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each violation. See *Minimum Penalties* at [Paragraph II.C.](#) of this chapter.

A. General

1. Each knowing violation shall be classified as Serious or Non-Serious.
2. There shall be no reduction for good faith.
3. In no case shall the proposed penalty for a knowing violation (Serious or Non-Serious) after reductions be less than \$5,000 or \$9,472 depending on applicability.

B. Serious Knowing Penalty Reductions

The reduction factors for size for Serious knowing violations shall be applied as shown in the following chart. This chart helps minimize the impact of large penalties for small employers with 50 or fewer employees. However, in no case shall the proposed penalty be less than the statutory minimum, i.e., \$5,000 or \$9,472 for these employers.

NOTE: For violations that are not Serious Knowing, use Table 6-2

Table 6-6: Serious Knowing Penalty Reductions

Employees	Percent Reduction
10 or fewer	80
11-20	60
21-30	50
31-40	40
41-50	30
51-100	20
101-250	10
251 or more	0

The reduction factor for history shall be applied.

The proposed penalty shall then be determined from Table 6-7.

Table 6-7: Penalties to be Proposed for Serious Knowing Violations

Total Percent Reduction for Size and/or History	Related to Fatality	Not Related to Fatality		
		High Gravity	Moderate Gravity	Low Gravity
0%	\$132,598	\$70,000	\$55,000	\$40,000
10%	\$119,338	\$63,000	\$49,500	\$36,000
20%	\$106,078	\$56,000	\$44,000	\$32,000
30%	\$92,819	\$49,000	\$38,500	\$28,000
40%	\$79,559	\$42,000	\$33,000	\$24,000
60%	\$53,039	\$28,000	\$22,000	\$16,000
70%	\$39,779	\$21,000	\$16,500	\$12,000
80%	\$26,520	\$14,000	\$11,000	\$8,000

C. Knowing Regulatory Violations

1. For calculating the GBP for regulatory violations, see [Paragraph III.A.5.](#) and [Section X](#) for Non-Serious violations.
2. In the case of regulatory violations that are determined to be knowing, the GBP penalty shall be multiplied by ten (10). In no event shall the penalty, after reduction for size and history, be less than \$5,000 or \$9,472 depending on applicability.

VII. Penalties for Failure to Abate

A. General

1. Failure to Abate penalties shall be proposed when:
 - a. A previous citation issued to an employer has become a final order of the Board of Safety Review; and
 - b. The condition, hazard or practice found upon re-inspection is the same for which the employer was originally cited and has never been corrected by the employer (i.e., the violation was continuous).
2. The citation has to have become a final order of the Indiana Board of Safety Review. Citations become a final order of the Indiana Board of Safety Review when the abatement date for that item passes, if the employer has not filed a notice of contest prior to that abatement date.

3. See [Chapter 15](#), *Legal Issues*, for information on determining final dates of uncontested citations, settlements, and Indiana Board of Safety Review decisions.

B. Calculation of Additional Penalties

1. Unabated Violations

A GBP for unabated violations is to be calculated for failure to abate a Serious or Non-Serious violation on the basis of the facts noted upon reinspection. This recalculated GBP, however, shall not be less than that proposed for the item when originally cited.

- a. EXCEPTION: When the CSHO believes and documents in the case file that the employer has made a good faith effort to correct the violation and had an objective reasonable belief that it was fully abated, the Division Director may reduce or eliminate the daily proposed penalty.
- b. For egregious cases see [CPL 02-00-080](#), Handling of Cases to be Proposed for Violation-By-Violation Penalties, dated October 21, 1990.

2. No Initial Proposed Penalty

In instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the Division Director. In no case shall the GBP be less than \$1,000 per day.

3. Size Only Permissible Reduction Factor.

Only the reduction factor for size – based upon the circumstances noted during the reinspection – shall be applied to arrive at the daily proposed penalty.

4. Daily Penalty Multiplier

The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except as provided below:

- a. The number of days unabated shall be counted from the day following the abatement date specified in the citation or the final order. It will include all calendar days between that date and the date of reinspection, excluding the date of reinspection.
- b. Normally the maximum total proposed penalty for failure to abate a particular violation shall not exceed **30** times the amount of the daily proposed penalty.
- c. At the discretion of the Division Director, a lesser penalty may be proposed. The reasoning for the lesser penalty shall be fully explained (e.g., achievement of an appropriate deterrent effect) in the case file.

- d. If a penalty in excess of the normal maximum amount of **30** times the amount of the daily proposed penalty is deemed necessary by the Division Director to deter continued non-abatement, the case shall be treated pursuant to the violation-by-violation (egregious) penalty procedures established in **CPL 02-00-080**, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, dated October 21, 1990.

C. Partial Abatement.

1. When a citation has been partially abated, the Division Director may authorize a reduction of 25 to 75 percent to the amount of the proposed penalty calculated as outlined above.
2. When a violation consists of a number of instances and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty shall take into consideration the extent of the abatement efforts.

EXAMPLE 6-3: Where three out of five instances have been corrected, the daily proposed penalty (calculated as outlined above, without regard to any partial abatement) may be reduced by 60 percent.

VIII. Violation-by-Violation (Egregious) Penalty Policy

A. Penalty Procedure

Each instance of noncompliance shall be considered a separate violation with individual proposed penalties for each violation. This procedure is known as the egregious or violation-by-violation penalty procedure.

B. Case Handling

Such cases shall be handled in accordance with **CPL 02-00-080**, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, dated October 21, 1990.

C. Calculation of Penalties

Penalties calculated using the violation-by-violation policy shall not be proposed without the concurrence of the Commissioner of Labor.

IX. Significant Enforcement Actions

A. Definition

A significant enforcement action (aka significant case) is one which results from an investigation in which the total proposed penalty is \$100,000 or more.

B. Multi-employer Worksites

Several related inspections involving the same employer or involving more than one employer in the same location (such as multi-employer worksites) and

submitted together, may also be considered to be a significant enforcement action if the total aggregate penalty is \$100,000 or more.

C. Public Sector Significant Cases

For public sector agencies, the action is considered significant if penalties of \$100,000 or more would have been applied if the agency were a private sector employer.

1. Significant public sector cases shall be developed, documented, and reviewed with the same rigor required for private sector cases.
2. In addition, Notices of Unsafe or Unhealthful Working Conditions in Public Sector cases shall be issued no later than six months from the date of the opening conference, thereby paralleling the six-month statutory limit in private sector cases set by the IOSH Act.

D. Commissioner of Labor Awareness

The Commissioner of Labor shall be made aware of significant enforcement cases.

X. **Penalty and Citation Policy for Part 1903 and 1904 Regulatory Requirements**

[Section 27.1](#) of the Act provides that any employer who violates any of the posting requirements shall be assessed a civil penalty of up to \$7,000 for each violation (this includes recordkeeping violations). The following policy and procedure document must also be consulted for an in-depth review of these policies: [CPL 02-00-111](#), *Citation Policy for Paperwork and Written Program Requirement Violations*, issued November 27, 1995. GBPs for regulatory violations, including posting requirements, shall be reduced for size and history (excluding knowing violations, see [Chapter 4, Section V](#), *Knowing Violations*).

A. Posting Requirements Under Part 1903

Penalties for violation of posting requirements shall be proposed as follows:

1. Failure to Post the IOSHA/OSHA Notice (Poster) – §1903.2(a)

A citation for failure to post the IOSHA/OSHA Notice is warranted if:

- a. The pattern of violative conditions for a particular establishment demonstrates a consistent disregard for the employer's responsibilities under the Indiana Occupational Safety and Health Act.

AND

- b. Interviews show that employees are unaware of their rights under the Act

OR

- c. The employer has been previously cited or advised by IOSHA of the posting requirement.

If the criteria above are met and the employer has not displayed (posted) the notice furnished by IOSHA as prescribed in [§1903.2\(a\)](#), then a Non-Serious citation shall normally be issued. The GBP for this alleged violation shall be \$1,000.

2. Failure to Post a Citation - §1903.16

- a. If an employer received a citation that was not posted as prescribed in [§1903.16](#), a Non-Serious citation shall normally be issued. The GBP shall be \$3,000.
- b. For information regarding the OSHA-300A form, see [CPL 0200-135](#), *Recordkeeping Policies and Procedures Manual*, December 30, 2004.

- B. Advance Notice of Inspection – §1903.6

When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by [§1903.6](#), a Non-Serious citation shall be issued.

- C. Abatement Verification Regulation Violations – §1903.19 (incorporated by reference in 610 IAC 9-2-8)

1. General

- a. The penalty provisions of Section 27.1 of the IOSH Act apply to all citations issued under this regulation.
- b. No “Good Faith” or “History” reduction shall be given to employers when proposing penalties for any §1903.19 violations; only the reduction factor for “Size” shall apply.
- c. See [Chapter 7](#), Post-Citation Inspection Procedures and Abatement Verification, for detailed guidance.

2. Penalty for Failing to Certify Abatement

- a. A penalty for failing to submit abatement certification documents, [§1903.19\(c\)\(1\)](#), shall be \$1,000, reduced only for size.
- b. A penalty for failure to submit abatement verification documents will not exceed the penalty for the entire original citation.

3. Penalty for Failing to Notify and Tagging.

Penalties for not notifying employees and tagging movable equipment §1903.19 [paragraphs (g)(1), (g)(2), (g)(4), (i)(1), (i)(2), (i)(3), (i)(5) and (i)(6)] will follow the same penalty structure (GBP of \$3,000) as for Failure to Post a Citation.

D. Injury and Illness Records and Reporting under Part 1904 (incorporated by reference in 610 IAC 9-3-1)

1. Part 1904 violations are always Non-Serious.
2. Repeat and Knowing penalty policies in paragraphs V.D. and VI.C., respectively, of this Chapter, may be applied to recordkeeping violations.
3. OSHA's egregious penalty policy may be applied to recordkeeping violations. See CPL 02-00-080, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, October 21, 1990.
4. See CPL 02-00-135, *Recordkeeping Policies and Procedures Manual*, dated December 30, 2004; specifically, Chapter 2, Section II, *Inspection and Citation Procedures*.

NOTE: 29 CFR Part 1904 has new requirements for reporting work-related fatalities, hospitalizations, amputations, or losses of an eye. The new rule, which also updates the list of employers partially exempt from OSHA record-keeping requirements, went into effect on January 1, 2015, for workplaces under Federal OSHA jurisdiction. (See 79 FR 56129, Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions, September 18, 2014.)

XI. Failure to Provide Access to Medical and Exposure Records

A. Proposed Penalties

If an employer is cited for failing to provide access to records as required under §1910.1020 for inspection and copying by any employee, former employee, or authorized representative of employees, a GBP of \$1,000 shall normally be proposed for each record (i.e., either medical record or exposure record, on an individual employee basis). A maximum GBP of \$7,000 may be proposed for such violations. See CPL 02-02-072, *Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records*, dated August 22, 2007.

EXAMPLE 6-4: If the evidence demonstrates that an authorized employee representative requests both exposure and medical records for three employees and the request was denied by the employer, a citation would be issued for six instances (i.e., one medical record and one exposure record (total two) for each of three employees) of a violation of §1910.1020, with a GBP of \$6,000.

B. Use of Violation-by-Violation Penalties.

The above policy does not preclude the use of violation-by-violation or per employee penalties where higher penalties are appropriate. See CPL 02-00-080, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, October 21, 1990.