

TITLE 610 DEPARTMENT OF LABOR

Notice of First Public Comment Period

LSA Document #25-159

CALCULATING IOSHA PENALTIES

PURPOSE OF NOTICE

The Department of Labor (department) is soliciting public comment on adding rules at [610 IAC 9-4](#) concerning calculating IOSHA penalties. The department seeks comment on the affected citations listed and any other provisions of Title 610 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

Regulatory Analysis: [20250326-IR-610250159RAA](#)

Notice of Public Hearing: [20250326-IR-610250159PHA](#)

CITATIONS AFFECTED: [610 IAC 9-4](#)

AUTHORITY: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

OVERVIEW

Basic Purpose and Background

In 2023, the Indiana legislature passed a law that required, among other things, that how the IOSHA division of the department calculates civil penalties be promulgated in a rule. Minimum and maximum penalties are currently set by statute found in [IC 22-8-1.1-27.1](#), but how the penalties is calculated are set forth in the IOSHA Field Operations Manual (IFOM), not a rule. This proposed rule does not seek to change the way IOSHA has been assessing penalties for many years under the IFOM, but only seeks to promulgate the current process for calculating those penalties into a rule to comply with Indiana law. This rule will continue to affect all Indiana employers that are assessed a penalty as a result of violating IOSHA regulations.

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

J. Anthony Hardman
Indiana Department of Labor
402 West Washington Street, Room W195
Indianapolis, IN 46204
(317) 232-2696
DOLlegal@dol.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

David Watkins
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 607-9176
DWatkins@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

The department is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #25-159 Calculating IOSHA Penalties
J. Anthony Hardman

Indiana Department of Labor
402 West Washington Street, Room W195
Indianapolis, IN 46204

- (2) By email to DOLlegal@dol.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.
- (3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than April 25, 2025.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Department of Labor, 402 West Washington Street, Room W195, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Department of Labor office.

If the department does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

SECTION 1. [610 IAC 9-4](#) IS ADDED TO READ AS FOLLOWS:

Rule 4. Calculating IOSHA Penalties

[610 IAC 9-4-1](#) General penalty policy

Authority: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 1. (a) The penalty structure described in this rule is part of IOSHA's general enforcement policy and shall normally be applied as set forth in this rule. 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 safety orders issued with all applicable adjustments or no adjustments. An inspection must maintain consistent penalty adjustments throughout the recommended safety orders.

(b) A decision not to apply the penalty adjustments is normally based on consideration of at least one (1) of the factors listed in this subsection. However, this list is not intended to be exhaustive. If the decision not to apply penalty adjustments is based on considerations other than the factors listed in this subsection, the decision must be fully explained in the case file and approved by the deputy commissioner or their designee. The factors to be considered include the following:

- (1) The proposed safety orders are related to a fatality or catastrophe.**
- (2) The employer has received a knowing or repeat violation within the past three (3) years related to a fatality.**
- (3) The employer has failed to report a fatality, an inpatient hospitalization, an amputation, or the loss of an eye under the requirements of 29 CFR 1904.39.**
- (4) The employer is currently on the Severe Violator Enforcement Program (SVEP) list.**
- (5) The proposed safety orders meet the requirements for inclusion in the SVEP.**
- (6) The proposed safety orders are being considered for an egregious case.**
- (7) The employer has numerous record keeping violations related to a large number or rate of injuries and illnesses at the establishment.**
- (8) The proposed failure to correct notification is based on a previous safety order for which the employer failed to submit abatement verification.**
- (9) The employer has been referred to debt collection for past unpaid IOSHA penalties.**

(c) Minimum penalties are applied as follows:

- (1) The proposed penalty for an alleged violation that could have reasonably contributed to a fatal incident is seven thousand dollars (\$7,000) without reduction.
- (2) When the proposed penalty for a serious violation amounts to less than one hundred dollars (\$100), a one hundred dollar (\$100) penalty is proposed for that violation.
- (3) When the proposed penalty for a nonserious violation, or a regulatory violation other than a posting violation, amounts to less than one hundred dollars (\$100), no penalty is proposed for that violation. If, however, there is a safety order for a posting violation, a penalty may be proposed even if it is less than one hundred dollars (\$100) since penalties for those violations are mandatory.
- (4) In no case may the proposed penalty for a knowing violation, either serious or nonserious, after reductions be less than five thousand dollars (\$5,000) or nine thousand four hundred seventy-two dollars (\$9,472) depending on applicability.

(Department of Labor; [610 IAC 9-4-1](#))

[610 IAC 9-4-2](#) Gravity, severity, and probability of a violation

Authority: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 2. (a) The gravity of a violation is the primary consideration in determining penalty amounts. Gravity is the basis for calculating the basic penalty for serious and nonserious violations, and is determined by severity and probability.

(b) The first step in classifying an alleged violation as serious or nonserious is based on the severity of the potential injury or illness that could result from the alleged violation. The following categories must be considered in assessing the severity of potential injuries or illnesses:

(1) For a serious violation, the following is considered:

(A) High severity includes:

- (i) death from injury or illness;
- (ii) injuries involving permanent disability; or
- (iii) chronic, irreversible illnesses.

(B) Medium severity includes injuries or temporary, reversible illnesses resulting in hospitalization for a variable but limited period of disability.

(C) Low severity includes injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.

(2) A nonserious violation is considered minimal severity. Although these violations reflect conditions that 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 will not be low, medium, or high severity, as described in subdivision (1)(A) through (1)(C), nor require medical treatment or cause death or serious physical harm.

(c) The probability that an injury or illness could occur as a result of the alleged violation has no role in determining the classification of a violation, but does affect the amount of the proposed penalty.

Probability is assessed as follows:

(1) Probability is categorized either as greater or lesser as follows:

(A) Greater probability results when the likelihood that an injury or illness will occur is judged to be relatively high.

(B) Lesser probability results when the likelihood that an injury or illness will occur is judged to be relatively low.

(2) The following probability factors must be considered, as appropriate, when violations are likely to result in injury or illness:

(A) Number of employees exposed.

(B) Frequency and duration of employee exposure to hazardous conditions, including overexposures to contaminants.

(C) Employee proximity to the hazardous conditions.

(D) Use of appropriate personal protective equipment.

(E) Medical surveillance program.

(F) Age of employees.

(G) Training on recognizing and avoiding the hazardous condition.

(H) Other pertinent working conditions.

(3) The factors outlined in subdivisions (1) and (2) must be considered in determining a final probability assessment. When adherence to the probability assessment procedures results in an unreasonably high or low gravity, the assessment may be adjusted at the discretion of the division director as appropriate. These decisions must be fully explained in the case file.

(d) The gravity-based penalty (GBP) for each violation is determined by combining the severity assessment and final probability assessment. The GBP is an unreduced penalty and calculated in accordance with the procedures described in this rule. For purposes of this rule, the term "unreduced penalty" has the same meaning as GBP.

(e) The GBP for serious violations is determined as follows:

(1) The gravity of a violation is defined by the GBP as follows:

(A) A high gravity violation is one with a GBP of seven thousand dollars (\$7,000) or greater.

(B) A moderate gravity violation is one with a GBP of:

(i) six thousand dollars (\$6,000);

(ii) five thousand dollars (\$5,000);

(iii) four thousand dollars (\$4,000); or

(iv) three thousand dollars (\$3,000).

(C) A low gravity violation is one with a GBP of two thousand dollars (\$2,000).

(2) The highest gravity classification, high severity and greater probability, is normally reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury or illness.

(3) For serious violations, the GBP is assigned based on the following scale in Table 4-1:

Severity + Probability = GBP

Table 4-1: 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

(f) The GBP for nonserious violations is determined as follows:

(1) For nonserious safety and health violations, there is only minimal severity.

(2) If the division director determines that it is appropriate to achieve the necessary deterrent effect, a GBP of seven thousand dollars (\$7,000) may be proposed. This discretion shall be exercised based on the facts of the specific case. The reasons for this determination must be fully explained in the case file.

(3) For nonserious violations, the GBP is assigned based on the following scale in Table 4-2:

Table 4-2: Nonserious Violations

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

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

(h) In egregious cases, violation-by-violation penalties are applied. This occurs when each instance of noncompliance is considered a separate violation, with individual proposed penalties for each violation. These cases must be handled in accordance with the Occupational Health and Safety Administration (OSHA) CPL 02-00-080, Handling of Cases to be Proposed for Violation-By-Violation Penalties, dated October 21, 1990. Penalties calculated under this policy may not be proposed without the concurrence of the deputy commissioner.

(i) Combined or grouped violations are considered as one (1) violation with one (1) GBP. Multiple violations of a single standard may be combined into one (1) safety order item. When a hazard is identified that involves interrelated violations of different standards, the violations may be grouped into a single item. The following procedures apply to the calculation of penalties for combined and grouped violations:

(1) The severity and probability assessments for combined violations are based on the instance with the highest gravity. It is not necessary to complete the penalty calculations for each instance or subitem of a combined or grouped violation once the instance with the highest gravity is identified.

(2) The following is used for grouped violations:

(A) When assessing the severity:

(i) the severity assigned to the grouped violation may be not less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item; and

(ii) 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 serves as the basis for the calculation of the severity factor.

(B) When assessing the probability:

(i) the probability assigned to the grouped violation may be not less than the probability of the item that is most likely to result in an injury or illness; and

(ii) 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 serves as the basis for the calculation of the probability assessment.

(3) Directors may use discretion to depart from grouping practices suggested in compliance directives and instead issue violations separately, if the violations require differing specific abatement actions.

Discretionary ungrouping must be considered where at least one (1) of the following factors is met:

(A) The employer is currently on the SVEP list.

(B) The employer has a history of knowing, repeat, or failure to correct violations.

(C) The violative conditions are related to an incident that resulted in a fatality, catastrophe, or reportable injury or illness.

(D) The inspection resulted in at least one (1) knowing, repeat, or failure to correct violation, or a significant number of serious violations.

(E) The inspection was initiated due to a release of a highly hazardous chemical.

(F) The inspection identified employee exposures to hazardous chemicals over the applicable OSHA permissible exposure limit.

(G) The inspection uncovered violations related to National Emphasis Program hazards.

Directors may also use discretionary ungrouping in the absence of any of the factors listed in subdivision (3)(A) through (3)(G) where necessary to achieve an appropriate deterrent effect. In all cases, the reasoning must be fully explained in the inspection case file.

(Department of Labor; [610 IAC 9-4-2](#))

[610 IAC 9-4-3](#) Penalty reduction factors

Authority: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

Affected: [IC 22-8-1.1-35.6](#)

Sec. 3. (a) Penalty adjustments vary depending on an employer's size, determined by the maximum number of employees, good faith, and a history of previous violations. Maximum penalty reductions are generally as follows:

(1) Not more than seventy percent (70%) reduction, or eighty percent (80%) for serious knowing violations, may be provided for size.

(2) Not more than twenty-five percent (25%) reduction may be provided for good faith.

(3) Not more than ten percent (10%) reduction may be provided for history.

However, no penalty reduction may be more than one hundred percent (100%) of the initial assessment. The reduction also may not reduce a penalty to less than the minimum penalty amounts described in this rule. Since these reduction factors are based on the general character of an employer's safety and health performance, the factors are calculated only one (1) time for each employer.

(b) After the classification as serious or nonserious, and the GBPs have been determined for each violation, the penalty reduction factors for size, good faith, and history are applied subject to the following limitations:

(1) Penalties proposed for violations classified as repeat violations are reduced only for size.

(2) Penalties proposed for violations classified as knowing violations are reduced only for size and history.

(3) Penalties proposed for serious violations classified as high severity and greater probability violations are reduced only for size and history.

(c) A history reduction of ten percent (10%) is given to employers that have not been issued by IOSHA any serious, knowing, or repeat violations in the past three (3) years.

(d) The three (3) year history of no prior safety orders from IOSHA are calculated from the opening conference date of the current inspection. Only safety orders that have become a final order under [IC 22-8-1.1-35.6\(a\)](#) within the three (3) years immediately before the opening conference date shall be considered.

(e) A history reduction may not be applied under the following conditions:

(1) For a repeat violation.

(2) To employers being issued a safety order for failure to certify abatement.

(3) For violations related to a fatality.

(4) To employers being issued a safety order for failure to notify employees and tagging movable equipment.

(f) A good faith penalty reduction is permitted to recognize an employer's effort to carry out an effective safety and health management system in the workplace. A good faith reduction is not related to an employer that immediately corrects or initiates steps to abate a hazard after being informed of a violation by the compliance safety and health officer (CSHO). The following apply to reductions for good faith:

(1) A good faith reduction is not permitted for any of the following:

(A) High gravity serious violations.

(B) Violations related to a fatality.

(C) Knowing violations. If a knowing violation is found, no reduction for good faith may be applied to any of the violations found during the same inspection.

(D) Repeat violations. If a repeat violation is found, no reduction for good faith may be applied to any of the violations found during the same inspection.

(E) Failure to correct violations. If a failure to correct violation is found, no reduction for good faith may be applied to any of the violations found during the same inspection.

(F) The employer is issued a safety order under abatement verification for failure to certify abatement.

(G) The employer is issued a safety order under abatement verification for failure to notify employees and tagging movable equipment.

(H) The employer has no safety and health management system, or there are major deficiencies in the program.

(I) The employer failed to report a fatality, an inpatient hospitalization, an amputation, or the loss of an eye under the requirements of 29 CFR 1904.39.

(2) A good faith reduction is permitted as follows:

(A) A twenty-five percent (25%) reduction for good faith normally requires a written safety and health management system. In exceptional cases, CSHOs may recommend a full twenty-five percent (25%) reduction for employers, with one (1) to twenty-five (25) employees, that have carried out an effective safety and health management system, but have not documented it in writing. To qualify for this reduction, the employer's safety and health management system must provide:

(i) appropriate management commitment and employee involvement;

(ii) worksite analysis for the purpose of hazard identification;

(iii) hazard prevention and control measures;

(iv) safety and health training;

(v) where young persons less than eighteen (18) years of age are employed, the CSHO's evaluation must consider whether the employer's safety and health management system appropriately addresses the particular needs of those employees, relative to the types of work they perform and potential hazards to which they may be exposed; and

(vi) 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 those employees, relative to the types of work they perform and potential hazards to which they may be exposed.

(B) A fifteen percent (15%) reduction for good faith is normally given if the employer has a documented and effective safety and health management system, with only incidental deficiencies.

(C) Only fifteen percent (15%) and twenty-five percent (25%) may be used to reduce penalties due to the employer's good faith.

(g) A penalty reduction of not more than seventy percent (70%) is permitted for small employers and eighty percent (80%) for serious knowing violations under Table 4-5 in section 5 of this rule. The size of the employer is calculated based on the maximum number of employees of an employer at all workplaces nationwide at any one (1) time during the previous twelve (12) months.

(h) Reduction for size may not be given for an alleged violation that could have reasonably contributed to a fatal incident.

(i) The rates of size reduction to be applied are as follows:**Table 4-3: Size Reduction**

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

(j) When an employer with one (1) to twenty-five (25) employees has at least one (1) serious violation of high gravity or multiple serious violations of moderate gravity showing a lack of concern for employee safety and health, the CSHO may recommend that only a partial reduction in penalty may be permitted for size. If the division director approves the partial reduction, the justification is to be fully explained in the case file.

(k) The total size reduction normally equals the sum of the reductions for each factor. The following table gives an overview of the percent of penalty reductions that apply to serious, nonserious, and repeat violations, and may be used for determining appropriate reduced penalties for serious and nonserious violations:

Table 4-4: 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

(I) Starred figures (*) in Table 4-4 represent penalty amounts not normally proposed for high gravity serious violations because no reduction for good faith is made in those cases. These amounts may occasionally apply to nonserious violations where the division director has determined a high unreduced penalty amount to be warranted.

(Department of Labor; [610 IAC 9-4-3](#))

610 IAC 9-4-4 Repeat violations

Authority: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 4. (a) Repeat violations must be evaluated as serious or nonserious, based on current workplace conditions, and not on hazards found in an earlier case.

(b) A GBP must be calculated for repeat violations based on facts noted during the current inspection.

(c) Only the reduction factor for size, appropriate to the facts at the time of the reinspection, may be applied.

(d) The amount of an increase to a proposed penalty for repeat violations is determined by the size of the employer's business as follows:

(1) For small employers with not more than two hundred fifty (250) employees nationwide, the GBP is multiplied by a factor of two (2) for the first repeat violation and 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 must be explained in the case file.

(2) For large employers with more than two hundred fifty (250) employees nationwide, the GBP is multiplied by a factor of five (5) for the first repeat violation and ten (10) for the second repeat violation.

(e) For a repeat, nonserious violation that otherwise has no initial penalty, a GBP penalty of two hundred dollars (\$200) is proposed for the first repeat violation, five hundred dollars (\$500) for the second

repeat violation, and one thousand dollars (\$1,000) for a third repeat violation. These penalties are not subject to the penalty increase factors discussed in subsection (d).

(f) For repeated instances of regulatory violations, the initial penalty is multiplied by two (2) for the first repeat violation and 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).

(Department of Labor; [610 IAC 9-4-4](#))

610 IAC 9-4-5 Knowing violations

Authority: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 5. (a) Knowing violations are classified as serious or nonserious. There may be no reduction for good faith, and the total penalty, after reductions, may not be less than the statutory minimum.

(b) The reduction factors for size for serious knowing violations are applied as shown in the following table. This chart helps lessen the impact of large penalties for small employers with not more than fifty (50) employees. For violations that are not serious knowing, Table 4-4 in section 3 of this rule is used:

Table 4-5: 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%

(c) The reduction factor for history is applied, and the proposed penalty determined, from the following table:

Table 4-6: 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
90%	\$13,260	\$7,000	\$5,500	\$5,000

(d) For regulatory violations determined to be knowing, the GBP penalty is multiplied by ten (10).

(Department of Labor; [610 IAC 9-4-5](#))

610 IAC 9-4-6 Failure to correct violations

Authority: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

Affected: [IC 22-8-1.1-35.6](#)

Sec. 6. (a) Failure to correct penalties are proposed when:

(1) a previous safety order issued to an employer has become a final order under [IC 22-8-1.1-35.6\(a\)](#); and

(2) the condition, hazard, or practice found on reinspection is the same for which the employer was originally issued a safety order and has never been corrected by the employer, meaning the violation has been continuous.

(b) A GBP for unabated violations is to be calculated for failure to correct a serious or nonserious violation based on the facts noted on reinspection. This recalculated GBP, however, may not be less than that proposed for the item when originally issued. The division director may reduce or eliminate the daily proposed penalty 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 objectively reasonable belief that it was fully abated.

(c) Egregious cases are handled under the OSHA CPL 02-00-080, Handling of Cases to be Proposed for Violation-By-Violation Penalties, dated October 21, 1990.

(d) In instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the division director. In no case may the GBP be less than one thousand dollars (\$1,000) per day.

(e) Only the reduction factor for size, based on the circumstances noted during the reinspection, may be applied to arrive at the daily proposed penalty.

(f) The daily proposed penalty is multiplied by the number of calendar days the violation has continued unabated, except as follows:

(1) The number of days unabated are counted from the day after the abatement date specified in the safety or final order. This must include the calendar days between that date and the date of reinspection, excluding the date of reinspection.

(2) Normally, the maximum proposed penalty for failure to correct a particular violation may not exceed thirty (30) times the amount of the daily proposed penalty.

(3) At the discretion of the division director, a lesser penalty may be proposed. The reasoning for the lesser penalty must be fully explained (e.g., achievement of an appropriate deterrent effect) in the case file.

(4) If a penalty exceeding the normal maximum amount of thirty (30) times the amount of the daily proposed penalty is considered necessary by the division director to deter continued nonabatement, the case shall be treated under the violation-by-violation, or egregious, penalty procedures established in the OSHA CPL 02-00-080, Handling of Cases to be Proposed for Violation-By-Violation Penalties, dated October 21, 1990.

(g) When a safety order has been partially abated, the division director may authorize a reduction of twenty-five percent (25%) to seventy-five percent (75%) to the amount of the proposed penalty calculated as outlined in subsection (f).

(h) When a violation consists of multiple instances and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty must take into consideration the extent of the abatement efforts.

(i) When an employer continues to fail to correct a violation and it becomes appropriate to issue a second failure to correct violation for the same hazard, there may be no reduction in penalty, and the penalty is issued at seven thousand dollars (\$7,000) per day for not more than thirty (30) days.

(Department of Labor; [610 IAC 9-4-6](#); filed)

[610 IAC 9-4-7](#) Part 1903 and Part 1904 regulatory requirements

Authority: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 7. (a) GBPs for regulatory violations, including posting requirements, may be reduced for size and history, excluding knowing violations.

(b) Penalties for violating posting requirements are proposed as follows:

(1) The GBP for an alleged nonserious violation of the IOSHA/OSHA notice posting requirement found in 29 CFR 1903.2(a) is one thousand dollars (\$1,000).

(2) The GBP for an alleged nonserious violation of the safety order posting requirement found in 29 CFR 1903.16 is three thousand dollars (\$3,000).

(c) Penalties for abatement verification regulation violations are proposed as follows:

(1) A penalty for failing to submit abatement certification documents under 29 CFR 1903.19(c)(1) is one thousand dollars (\$1,000), reduced only for size.

(2) 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 applies.

(3) A penalty for failure to submit abatement verification documents may not exceed the penalty for the entire original safety order.

(4) Penalties for not notifying employees and tagging movable equipment under 29 CFR 1903.19, specifically paragraphs (g)(1), (g)(2), (g)(4), (i)(1), (i)(2), (i)(3), (i)(5), and (i)(6), follow the same penalty structure as for failing to post a safety order, using a GBP of three thousand dollars (\$3,000).

(d) Penalties for injury and illness records and reporting violations are proposed as follows:

(1) Violations of 29 CFR 1904 are always nonserious.

(2) Repeat and knowing penalty rules may be applied to record keeping violations.

(3) The egregious penalty rules may be applied to record keeping violations.

(4) The unadjusted penalty for a reporting violation is normally five thousand dollars (\$5,000). If the director determines that it is appropriate to achieve the necessary deterrent effect, the unadjusted penalty may be seven thousand dollars (\$7,000). Good faith penalty reductions are not allowed for failures to report.

(Department of Labor; [610 IAC 9-4-7](#))

[610 IAC 9-4-8](#) Failure to provide access to medical and exposure records

Authority: [IC 22-1-1](#); [IC 22-8-1.1-27.1](#)

Affected: [IC 22-8-1.1](#)

Sec. 8. (a) If an employer is issued a safety order for failing to provide access to records as required under 29 CFR 1910.1020 for inspection and copying by:

(1) an employee;

(2) a former employee; or

(3) an authorized representative of employees;

a GBP of one thousand dollars (\$1,000) is normally proposed for each record (i.e., either medical record or exposure record, on an individual employee basis). A maximum GBP of seven thousand dollars (\$7,000) may be proposed for these violations.

(b) This does not preclude the use of violation-by-violation or per employee penalties where higher penalties are appropriate.

(Department of Labor; [610 IAC 9-4-8](#))

Posted: 03/26/2025 by Legislative Services Agency