Chapter 18

CITATIONS AND CASE REVIEW

Table of Contents

Policy 2
Statement 2
Purpose 2
Authority 2

Procedures 2
I. Important Terms and Concepts 2
II. Case File Review 5
III. Citation 10
IV. Office or Field Issuance of Enforcement Action(s) 26

Appendices 28
A. Proposed Penalties 29

Chapter 18

CITATIONS AND CASE REVIEW

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to issue a Citation and Notification of Penalty for each hazard noted by compliance personnel during a workplace inspection which represents a violation of a Title 8 Safety Order.

Purpose: This policy is intended to set forth procedures for DOSH team members to issue citations and proposed penalties to employers when workplace inspections reveal violations of safety and health standards.

Authority: DOSH shall administer this policy in compliance with all applicable laws, rules, and guidance:

- California Code of Regulations, Title 8, Sections 332 through 336, and 340.4
- California Labor Codes, Sections 6317 through 6319, 6319.3, 6319.5, 6320, 6427 through 6436, 6652, 6712(d)

Procedures:

I. Important Terms and Concepts

A. Enforcement Action

1. Citation

   If, after an inspection or investigation, DOSH believes an employer has violated a safety law, standard, rule, order, or regulation, it shall promptly issue a written citation. The citation must specifically describe the violation, identify the requirement violated, and set a reasonable deadline for correction (abatement).

2. Information Memorandum

   Information Memorandum is a written notification used by DOSH to bring an employer's attention to a workplace condition that has the potential to become a violation of a Title 8 Safety Order if employee exposure to the condition occurs. An *Information Memorandum* does not constitute a

citation or a finding of a violation; rather, it serves to inform the employer of a potential hazard and encourage corrective action before a violation occurs. Failure to address the identified condition may result in employee exposure, subsequent enforcement action, and the issuance of citations if a violation of applicable Title 8 Safety Orders is later observed. See Policy and Procedures (P&P) Chapter 23: *Information Memorandum*.

3. Notice

    a. *Notice* is an enforcement document that may be issued by DOSH in lieu of a citation when a violation identified during an inspection or investigation does not have a direct or immediate impact on employee safety or health. See Chapter 22: *Notice*.

    b. A *Notice* may be issued when:

        i. The observed violative condition does not directly relate to employee safety or health, or

        ii. The violative condition is general or regulatory in nature and does not have an immediate impact on employee safety or health.

            EXCEPTIONS: *Notice* must not be issued for conditions classified as serious, willful, repeat, or failure-to-abate violations. *Notice* must also not be issued when the total number of general or regulatory violations equals or exceeds ten (10).

4. Order to Take Special Action

    a. An *Order to Take Special Action* is an order issued by DOSH's Chief, or an authorized representative, requiring an employer to comply with applicable provisions of Division 5 of the California Labor Code or specific Occupational Safety and Health Standards Board (OSHSB) regulations or orders where enforcement is within DOSH's discretion. See Chapter 24: *Order to Take Special Action*.

    b. An *Order to Take Special Action* may be issued to require an employer to correct an unsafe workplace condition that presents a threat to employee health or safety when the condition can be addressed under an existing Title 8 Safety Order only through a specific action directed by DOSH.

        EXAMPLE: Title 8 of the California Code of Regulations (8 CCR) Section (§) 3383(a) states: "Body protection may be required for

employees whose work exposes parts of their body, not otherwise protected as required by other orders in this article, to hazardous or flying substances or objects." If employees are exposed to hazardous substances, DOSH may order the employer to provide body protection for the exposed employees by invoking the discretionary requirement found in 8 CCR § 3383(a) in an *Order to Take Special Action*.

5. Special Order

   Special Order is an order written by DOSH's Chief and/or their authorized representative to remedy an unsafe condition, device, or place of employment which poses a threat to the health or safety of an employee, and which cannot be made safe under an existing Title 8 Safety Order. See Chapter 21: *Special Order*.

B. **Citation Package**

A citation package is the complete set of enforcement documents issued by DOSH to an employer following an inspection or investigation in which one or more violations are identified. The package includes the citation(s), proposed civil penalties, abatement requirements and deadlines, posting instructions, notice of informal conferences and appeal rights, and any other applicable enforcement documents.

C. **High-Profile Case**

Any occupational safety or health compliance case which involves one of the following conditions shall be considered as a "high-profile case":

1. Penalties of $100,000 or more*,
2. Interest from elected officials,
3. Inquiries from the Director's office,
4. Significant media interest (e.g., NYT, LA Times, CNN, and San Francisco Chronicle),
5. Health inspection where there is no Permissible Exposure Limit (PEL) or other standard, and
6. Willful/criminal willful violation*.

*Requires Legal Unit Review

D. **Significant Case**

Any occupational safety or health compliance case which involves one of the following conditions shall be considered as a “significant case”:

1. Fatalities and catastrophic events,

2. Interest at national level identified by OSHA,

3. Identified as significant by the Deputy Chief of Enforcement (State Agencies),

4. Repeat violation (third instance or higher),

5. Ergonomics violations, and

6. Special Order or Order to Take Special Action.

NOTE: A significant case may also be classified as a high-profile case when it meets the above definition of a high-profile case or is designated high-profile by the Deputy Chief of Enforcement. When a significant case becomes high-profile, the additional review and notification requirements for high-profile cases apply.

II. Case File Review

A. **General Case File Review and Notification**

1. All case files must be reviewed and approved by the District Manager (DM), Senior Industrial Hygienist Supervisor (SIHS) and/or an authorized designee, which is herein referred to as DM/SIHS/Designee, prior to closing and citation issuances to ensure that the files are organized and well documented in accordance with the procedures, and that they are clearly presented with appropriate findings and conclusions.

   Compliance Safety and Health Officers (CSHOs) must not close a case or issue a citation without the review and approval of the DM/SIHS/Designee (**as evidenced by the DM/SIHS/Designee’s signature on the Cal/OSHA Form 2 or notation in the case diary log**).

2. Prior to closing or citation issuance, certain cases, such as high-profile and significant case files, must require, in addition to DM/SIHS/Designee approval, notification and/or formal review by one or a combination of the following:

a. Regional Manager

b. Assistant Deputy Chief of Enforcement

c. Deputy Chief of Enforcement

d. Research & Standards Unit

e. DOSH Legal Unit

f. Public Information Officer (PIO)

g. Department of Industrial Relations (DIR) – Office of External Affairs (OEA)

h. Chief's Office

i. Director's Office

j. Other DOSH managers

k. OSHA

3. **DM/SIHS/Designee must not approve the issuance of citations or closure of any high-profile or significant case without approval from the Deputy Chief or their authorized designee.**

4. Prior to closing or issuing any enforcement action(s), all **high-profile** cases must undergo the following:

   a. A formal review and/or approval process conducted by the DM/SIHS/Designee, Regional Manager, Assistant Deputy Chief of Enforcement, Deputy Chief of Enforcement **and/or** Legal Unit, **and**

   b. A notification that can include the following appropriate parties, based on individual case circumstances:

      i. Chief's Office

      ii. Director's Office

      iii. Other DOSH managers

      iv. OSHA

v. Public Information Officer (PIO)

vi. DIR-OEA

vii. DOSH Chief Counsel

***NOTE*: DOSH Authority.** Nothing in the above procedures will affect DOSH's responsibility and final authority to issue citations.

5. Prior to closing/issuing any enforcement action(s), all **Significant** cases must undergo the following:

   a. A formal review and approval process conducted by the DM/SIHS/Designee, Regional Manager (RM), and Assistant Deputy Chief (ADC), **and/or**

   b. A notification that can include the following parties, based on individual case circumstances:

      i. Deputy Chief of Enforcement

      ii. Chief's Office

      iii. Director's Office

      iv. Other DOSH managers

      v. DOSH Chief Counsel

      vi. OSHA

      vii. Public Information Officer (PIO)

      viii. DIR-OEA

      ***NOTE*: DOSH Authority.** Nothing in the above procedures will affect DOSH's responsibility and final authority to issue citations.

6. **Tracking High-Profile and Significant Cases.** The RM is responsible for tracking all high-profile and significant cases within the region and for notifying the Enforcement Headquarters Office of each such case.

   The RM must notify the Enforcement Headquarters Office as soon as possible, but no later than ten (10) working days after: (1) the date of the opening conference, for a case that meets the definition of a high-

profile or significant case at the time the inspection; or (2) the date on which the case is first identified as high-profile or significant.

B. **DM/SIHS/Designee Case File Review and Notification**

1. DM/SIHS/Designee must review cases for compliance with all requirements of the “DOSH Compliance Policy and Procedure Manual” and other department/agency policy and procedures.

2. At a minimum, DM/SIHS/Designee must review each of the following case file elements:

   a. Case file organization is consistent with requirements.

   b. Case accident narrative is complete, clear, and prepared in accordance with procedures.

   c. Findings and conclusions are well documented.

   d. Appropriate documentation is contained in the file.

   e. All exhibits are properly numbered and tabbed.

   f. All required DOSH forms are completed correctly.

   g. Appropriate testing/sampling was done.

   h. Sufficient photos and witness statements of employees, accident witnesses and supervisory personnel are included.

   i. Violations are properly cited and are described sufficiently.

   j. Citations are written in accordance with the DOSH Compliance Policy and Procedure Manual.

   k. Justification is included in the file for all willful and criminal, willful cases, and submit the case to Regional Manager and the Legal Unit for review.

   l. Penalties were accurately calculated and recorded on Cal/OSHA Form 10: *Proposed Penalty Worksheet*.

   m. Inspection was conducted and the file prepared in a timely manner.

n. Citations are consistent with safety and health evaluation on Cal/OSHA Form 2A: *Proposed Enforcement Action Worksheet.*

3. **DM/SIHS/Designee** must ensure that all deficiencies are corrected by the CSHOs before forwarding case files to the Regional Manager for review/approval. High-profile and significant case files must be forwarded to the Regional Manager as soon as possible, but no later than **ninety (90) working days** after the opening conference.

C. **Regional Manager Case File Review and Notification**

1. The Regional Manager and/or their authorized designee, which is herein referred to as RM/Designee, must review all high profile and significant case files.

2. At a minimum, the RM/Designee must review the file to determine the following:

   a. The DM/SIHS/Designee properly reviewed and made any necessary changes or corrections to the file before forwarding it for a high profile and/ or significant case review.

   b. The case file is organized in accordance with the procedures of this DOSH Compliance Policy and Procedure Manual.

   c. Case accident narrative is clear and is written in accordance with procedures.

   d. All findings and conclusions are clear, concise, proper, and well documented.

   e. Violations are properly cited and the citations are written correctly.

   f. Investigation and case file preparation was completed in a timely fashion to allow for Enforcement Headquarter staff review.

   g. Closing Conference was held unless the DM/SIHS/Designee was directed otherwise and all necessary DOSH and Federal OSHA forms have been accurately completed.

   h. Penalty was calculated properly.

3. If the RM/Designee determines that additional investigation or documentation is needed to substantiate the case findings or conclusions, the file will be returned to the DM/SIHS/Designee for action.

4. RM/Designee must ensure that all deficiencies are corrected by the CSHOs before forwarding case files to the ADC for review/approval.

5. RM/Designee must forward to the assistant chief as soon as possible, but no later than 120 days after the opening conference, high-profile case files for review and approval.

D. Assistant Deputy Chief of Enforcement Case File Review and Notification

1. The Assistant Deputy Chief and/or their authorized designee, which is herein referred to as ADC/Designee, must review all high-profile and significant-case files.

2. At a minimum, the ADC/Designee must review the file to determine the following:

   a. The case file is organized in accordance with the procedures of this DOSH Compliance Policy and Procedure Manual

   b. Case accident narrative is clear and is written in accordance with procedures

   c. Violations are properly cited and the citations are written correctly

   d. Investigation and case file preparation was completed in a timely fashion to allow for Enforcement Headquarter staff review

   e. Closing Conference was held unless the DM/SIHS was directed otherwise and all necessary DOSH and Federal OSHA forms have been accurately completed

   f. Penalty was calculated properly.

3. ADC/Designee must inform the RM of all deficiencies found within the case and ensure that all such deficiencies are corrected before forwarding a summary of the case file to the Deputy Chief for review and notification to others, such as the PIO, OEA, etc. prior to approving the closing and/or issuance of citation(s).

III. Citation

A. Citation Preparation

1. The proper writing of a citation is an essential part of the enforcement process. Citing incorrect standards and improperly written violations descriptions may cause unnecessary amendments, encourage unnecessary informal conferences, or protest which may result in the Administrative Law Court vacating or modifying otherwise valid citations.

2. Therefore, CSHOs are required to thoroughly and accurately complete a Cal/OSHA Form 2A: *Proposed Enforcement Action Worksheet* for each recommended citation and notice in lieu. CSHOs must place these documents in the working case file.

3. Evidence and records obtained during the course of the inspection that the CSHOs determine are necessary to support the issuance of violations with civil penalties, notices and information memorandums shall be used to complete the Cal/OSHA Form 2A (see Chapter 7: *Inspection Procedures*). Such evidence and records must:

    a. Describe the observed hazardous conditions or practices, including all relevant facts, and all information pertaining to how and/or why a standard is violated.

    b. Specifically identify the hazard to which employees have been or could be exposed.

    c. Describe the type of injury or illness which the violated standard was designed to prevent in this situation or note the name and exposure level of any contaminant or harmful physical agent to which employees are, have been, or could be potentially exposed.

    d. If employee exposure was not actually observed during the inspection, state the facts on which the determination was made (i.e., tools left inside an unprotected trench) that an employee has been or could have been exposed to a safety or health hazard.

4. CSHOs must document the following information in the Cal/OSHA Form 2A:

    a. Explanation of the hazard(s), hazardous workplace condition(s), or practice(s).

    b. Identification of the machinery or equipment (such as equipment type, manufacturer, model number, serial number).
    c. Specific location of the hazard and employee exposure to the hazard.

    d. Injury or illness likely to result from exposure to the hazard.

e. Employee proximity to the hazard and specific measurements taken, (describe how measurements were taken, identify the measuring techniques and equipment used, identify those who were present and who observed the measurements being made, and include calibration dates of equipment used).

f. For contaminants and physical agents, any other facts that clarify the nature of employee exposure. A representative number of Safety Data Sheet (SDS) should be collected for hazardous chemicals that employees could be exposed to.

g. Names, addresses, phone numbers, and job titles for exposed employees.

h. Approximate duration of time that the hazard has existed and frequency of exposure to the hazard.

i. Employer knowledge.

   Document all facts establishing that the employer actually knew of the hazardous condition, or that the employer could have known of it through the exercise of reasonable diligence, including, but not limited to, the frequency and adequacy of the employer's own worksite inspections, supervisory presence, the duration and visibility of the condition, prior complaints or near misses, and any training or written program addressing the condition. See Appendix B of Chapter 7.

   i. **Willful violations**. Where a violation may be classified as willful, facts shall be documented to show either that the employer knew of the applicable legal requirements and intentionally violated them, or that the employer was aware of the hazardous condition and made no reasonable effort to eliminate it (see Appendix B of Chapter 7). All willful and criminal willful proposals require Legal Unit review prior to issuance.

   ii. Document any relevant comments made by the employer or employee during the walkaround or closing conference, including any employer comments regarding why it violated the standard.

   iii. Include any other facts that could assist in evaluating the situation or in reconstructing the total inspection picture in preparation for testimony in possible legal actions.

j. Appropriate and consistent abatement dates should be assigned and documented for abatement periods longer than 30 days. The

abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation. An abatement period should be indicated in the citation as a specific date, not a number of days. When abatement is witnessed by the CSHO during an inspection, the abatement period shall be listed on the citation as "Corrected During Inspection."

The establishment of the shortest practicable abatement date requires the exercise of professional judgment on the part of the CSHO. Abatement periods exceeding 30 days shall not normally be offered, particularly for simple safety violations. Situations can arise, however, especially for complex health or program violations, where abatement cannot be completed within 30 days (e.g., ventilation equipment needs to be installed, new parts or equipment need to be ordered, delivered and installed or a process hazard analysis needs to be performed as part of a PSM program). When an initial abatement date is granted that is in excess of 30 calendar days, the reason should be documented in the case file. See Chapter 19: *Abatement*.

k. Reference records and evidence obtained during the course of the inspection that support the violations.

l. For violations proposed as Repeat, the case file shall include a copy of the prior citation(s) on which the repeat classification is based, documentation that the prior citation became a final order, and the date it became final.

The CSHO shall enter all required information to generate each proposed alleged violation, notice in lieu of a citation, and/or information memorandum in OIS. CSHOs shall place these OIS generated documents in the working case file.

B. Standards and Regulations

1. Applicable Standards, Statutes, and Regulations

After identifying a hazardous condition, practice, or other apparent violation, the CSHO shall review the applicable Title 8 standards, Labor Code provisions, and other requirements enforceable by DOSH to determine whether the hazardous condition within their scope and application. Citations shall not be issued unless the citation is based on mandatory language in applicable Title 8 standards, Labor Code provisions, and other requirements enforceable by DOSH and, when applicable, in referenced standards.

2. California Occupational Safety and Health Act of 1973

Labor Code section 6407 requires employers and employees to comply with applicable occupational safety and health standards and with all rules, regulations, and orders issued under Division 5 of the Labor Code.

3. **Title 8 Standards and Regulations**

   California occupational safety and health standards are primarily found in 8 CCR, Division 1, Chapter 4. Standards are cited by section and the applicable subdivisions. For example, the standards naming convention of Section 5204(f)(2)(D)1.a. is organized as follows:

Subdivision Naming Convention	Example
Title	8
Section	5204
Subdivision	(f)
Paragraph	(2)
Subparagraph	(D)
Clause	1
Subclause	a

   ***NOTE*:** The most specific provision of a standard shall be used for citing violations.

4. **Definition and Application of Vertical and Horizontal Standards**

   a. **Vertical standards** are standards that apply to a particular industry or to particular operations, practices, conditions, processes, means, and methods. For example, construction, logging, petroleum, or mining.

   b. **Horizontal standards** are **general standards** that apply across many industries (for example, requirements for first aid, fire protection, Heat illness or walking-working surfaces).

5. **Application for Horizontal and Vertical Standards**

   If CSHOs are uncertain whether to cite under a horizontal or a vertical standard when both may be applicable, the DM/SIHS/Designee shall be consulted. The following guidelines shall be considered:

   a. When the same hazard is covered by both a horizontal and a vertical standard in California Title 8, the vertical standard takes precedence because it is written specifically for that industry or activity. For

example, both 8 CCR §3212 (General Industry Safety Orders) and 8 CCR §1632 (Construction Safety Orders) require protection for floor openings to prevent falls. If a maintenance employee in an operating manufacturing plant is exposed to an unguarded floor opening, §3212 applies because the work is general industry. However, if construction workers are building a new structure and are exposed to an open stairwell or elevator shaft, §1632 applies because it is the construction-specific (vertical) standard. Although both standards address the same fall hazard, the construction standard governs because it is specifically designed for construction operations.

b. In situations covered by both a horizontal (general) and a vertical (specific) standard where the horizontal standard appears to offer greater protection, the horizontal (general) standard can be cited only if its requirements are not inconsistent or in conflict with the requirements of the vertical (specific) standard. To determine whether there is a conflict or inconsistency between the standards, an analysis of the intent of the two standards must be performed. For the horizontal standard to apply, the analysis must show that the vertical standard does not address the precise hazard involved, even though it may address related or similar hazards.

   EXAMPLE: When employees are connecting structural steel 8 CCR § 1670, it cannot be cited for fall hazards above 7½ feet since that specific situation is covered by 8 CCR § 1710 for fall distances of more than 30 feet.

c. If the particular industry does not have a vertical standard that covers the hazard, then the CSHOs shall use the horizontal (general industry) standard.

d. When determining whether a horizontal or a vertical standard is applicable to a work situation, the CSHOs shall focus attention on the particular activity in which an employer is engaged in rather than on the nature of the employer's general business.

e. If a question arises about whether an activity is deemed "construction" for purposes of the Act, contact the DM/SIHS/Designee, see 8 CCR § 1502: *Construction Work*.

6. **Citing in the Alternative** is the citation of two or more 8 CCR standards for the same violative condition when more than one standard may apply to the cited condition.

   EXAMPLE:

8 CCR § 5157
(c) General requirements.
(1) The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces.

IN THE ALTERNATIVE:

8 CCR § 1952 General Requirements.
(a) Before it begins work at a worksite, each employer shall ensure that a competent person identifies all confined spaces in which one or more of the employees it directs may work, and identifies each space that is a permit space, through consideration and evaluation of the elements of that space, including testing as necessary.

Alleged Violation Descriptions (AVDs):

Prior to and during the course of the inspection including, but not limited to on October 21, 2021, the employer did not evaluate the workplace to determine if any spaces at the site were permit-required confined spaces. Three employees were observed working inside permit-required confined spaces and were exposed to hazards, including engulfment and physical hazards, that could result in serious injuries, including asphyxiation or suffocation, loss of consciousness, crush injuries, fractures, internal injuries, hospitalization, or death.

7. **Violation of Variances**

   The employer's requirement to comply with a standard can be modified by granting a variance.

   a. In the event that the employer is not in compliance with the requirements of the variance, a violation of the controlling standard shall be cited with a reference in the citation to the variance provision that has not been met.

   b. If, during an inspection, CSHOs discover that an employer has filed a variance application regarding a condition that is an apparent violation of a standard, the DM/SIHS/Designee shall determine whether the variance request has been granted. If the variance has not been granted, a citation for the violative condition can be issued.

C. **Type of Violation –** (See Appendix B of Chapter 7)

D. **Pre-Issuance of a Serious Citation**

   1. Notice of intent to classify as serious (Cal/OSHA Form 1BY)

a. **Purpose.** Before issuing a citation for a serious violation, CSHOs must deliver to the employer a Cal/OSHA Form 1BY: *Notice of Intent to Classify as Serious*. The purpose of the Cal/OSHA Form 1BY process is to clearly communicate to the employer that DOSH believes there is a serious violation and to give the employer an opportunity to show why a serious violation does not exist.

b. **Content.** The Cal/OSHA Form 1BY must contain the alleged violation descriptions ("AVD") DOSH intends to cite as serious and must clearly solicit the information specified in Part 6.a. above (Labor Code § 6432[b]). The AVD shall be limited to the charging language. All Title 8 regulations that might reasonably be cited based on the AVD language shall be listed below the AVD language as “possible violated regulations.” If there is more than one alleged serious violation, a separate Cal/OSHA Form 1BY notice must be prepared for each violation.

c. **Delivery time.** CSHOs must deliver the Cal/OSHA Form 1BY as soon as possible to allow sufficient time to consider the employer’s response. At the very latest, the notice must be delivered to the employer not less than 15 calendar days prior to the citation being issued (Labor Code § 6432[b][2]).

d. **Delivery methods**. CSHOs must identify the best way or ways to deliver the Cal/OSHA Form 1BY to ensure that the employer has at least 15 calendar days to review and respond to it. The notice can be delivered using one or a combination of the following methods: Regular mail, certified mail, fax, overnight delivery, personal delivery, and/or email. Whichever method or methods are used, CSHOs must verify that the employer received or should have received the notice. If the employer cannot be reached, CSHOs must still deliver the notice far enough in advance to give the employer at least 15 calendar days to review and respond to it before the citation is issued.

e. **Documentation.** A copy of the Cal/OSHA Form 1BY must be retained in the inspection file.

2. Review of employer’s response to the Cal/OSHA Form 1BY CSHOs must review the employer’s response to the Cal/OSHA Form 1BY as discussed below, while keeping in mind the importance of issuing citations in a timely fashion and issuing within the six-month time limit. If an employer makes a request to respond to the Cal/OSHA Form 1BY after the response date specified in the notice, CSHOs must inform the employer that no extension can be granted.

a. **Timely written response.** If the employer responds in writing to the Cal/OSHA Form 1BY within the response time specified in the notice, CSHOs must consider the information contained in the response and, if warranted, make changes to the citation based on the information provided by the employer.

b. **Timely oral response.** If the employer makes a request to respond orally to the Cal/OSHA Form 1BY notice within the response time specified in the notice, CSHOs must accommodate the request but also inform the employer that because the investigation is still open, any information or statements the employer provides could potentially be used to support citations issued against the employer. Regardless of whether the employer responds orally, the employer retains the right to respond in writing within the response time specified in the notice.

c. **No response.** If the employer does not respond, CSHOs can and shall issue the citation after the response time specific in the notice has expired.

E. Penalties for DOSH Violations

1. Civil Penalties

The civil penalty structure established by Labor Code § 6427 through 6434, and implemented through the penalty regulations in 8 CCR § 333 through 336, is intended to:

a. Promote compliance by encouraging employers to prevent hazardous exposures.

b. Correct violations of Labor Code and Title 8 safety and health standards, before an inspection takes place.

c. Avoid the risk of preventable injuries or illnesses by using the deterrent effect of penalties.

2. Assessment of Civil Penalty

a. CSHOs must assess a civil penalty for each serious, repeat, willful, failure-to-abate violation and for the following regulatory violations: failure to report carcinogen use; failure of a physician to report a pesticide-related illness; failure to conform to asbestos-related registration requirements, and failure to obtain a construction activity permit. Penalties for general and regulatory violations, which are not

listed above, will also be proposed unless a Notice in lieu of a citation is issued by the Division in accordance with Labor Code § 6317 and Chapter 22.

b. CSHOs are required to thoroughly and accurately complete a Cal/OSHA Form 10: *Proposed Penalty Worksheet* (see Appendix A for detail instructions on calculating civil penalties). CSHOs must place the completed Cal/OSHA Form 10 document in the working case file.

F. Citation Writing

1. Alleged Violation Descriptions (AVDs)

Labor Code § 6317(a) requires each citation to describe with particularity the nature of the violation, including the provision alleged to have been violated. The alleged violation description (AVD) must clearly explain how the employer violated the cited requirement and be specific enough to inform the employer of what must be corrected and allow the employer to prepare a defense.

CSHOs must enter alleged violation description (AVD) language on the Cal/OSHA Form 2A and in OIS for each violation. It becomes part of the citation and describes specific details about the violation. AVDs must include charging language such as: *"The employer did not have, implement, ensure, provide, enforce, develop, maintain, document, etc."*

a. AVDs generally include the following:

i. A summary of what the standard required the employer to do to protect their employee(s).

ii. How the employer did not meet the standard's requirements.

iii. How many employee(s) were exposed to the hazard.

iv. Specific information about the hazard such as: distance from, height of fall, make/model/serial number of machine or tools, task during exposure.

v. The specific location of the hazardous condition or practice.

vi. When the violation involves incomplete or inadequate written programs, the AVD must specify what was missing from the employer's written programs or how it was not tailored to the business operations.

vii. Number of instances. For example: state the number of saws not guarded, or the number of employees not wearing hard hats.

b. AVDs must not include the following:

i. Added requirements that are not included in the standard(s) being cited.

ii. Abbreviations.

iii. Acronyms unless they are defined. For example, “No personal protective equipment (PPE) was provided.”

iv. Employee names.

2. **DM/SIHS/Designee’s Authority and Responsibility**

DM/SIHS/Designee are responsible for ensuring, with regard to all citations, that:

a. The documentation of the violation supports the citation.

b. The language of the citation is clear and adequately communicates to the employer a clear description of the hazard (including its location) and employee exposure.

c. The proper codes were cited.

d. The penalty was calculated correctly.

G. **Citation Issuance**

1. It is important that citations are issued correctly in the **legal name** of an employer and that they are delivered successfully.

When citations are incorrectly issued or not received by an employer, DOSH’s ability to carry out its mission is hindered. If an employer receives an incorrectly issued citation and then appeals it, the citation may be vacated. Even if an employer does not appeal, DOSH’s ability to pursue collection of unpaid penalties can be affected.

Finally, if citations are not received by an employer, there may be a problem if used as the basis for willful, repeat, or failure to abate violations discovered during later inspections.

2. All citations **shall** be sent by certified mail, return receipt requested, to the employer. However, if a Citation is field-issued, compliance personnel shall complete a Cal/OSHA Form 2X: *Declaration of Service*, provide a copy of the Declaration to the employer, and place the original Declaration in the Employer Case File.

   Under no circumstances may DOSH staff personally serve citations if an employer has previously displayed acts of hostility against DOSH or any DOSH employee, or if the citation must be delivered to an employer's private residence.

3. The DM/SIHS/Designee may elect to have the citation served by, outside delivery service, or DOSH staff. A signed receipt must be obtained whenever possible. All signed receipts of delivery which are received must be placed in the case file. If no receipt is obtained, the circumstances of delivery, such as an Affidavit of Service, must be documented in the case file.

4. **Sending Copies of Citations to Employee Representatives**. CSHOs must ensure the contact information for union representatives is accurately recorded on the **Cal/OSHA Form 1A**, so that they receive copies of the citations. Individual employees can request a citation copy through DOSH's Public Records Unit, *PublicRecords@dir.ca.gov*.

5. **Timeline for Issuing Citations**

   a. **Timeliness**

      DOSH shall issue all Citations as promptly as possible after completion of the inspection and gathering of all relevant evidence.

   b. **Six-Month Statute of Limitations**

      i. If a violation is observed by compliance personnel, the deadline for issuance of a Citation is six (6) months from the last date on which the violation was observed.

      ii. If a violation no longer exists at the time of the inspection (unobserved violation), the deadline for issuance of a Citation is six (6) months from the last date on which the violation existed.

      ***EXAMPLE*:** If a complaint alleges that an employer required an employee to use a table saw without a guard 120 days prior to the District Office receiving the complaint and, during an inspection conducted 121 days after the violation occurred, compliance personnel acquire evidence from an employee

interview that the violative condition did indeed occur four months before the inspection, then a Citation can be issued, but must be issued within 59 days.

iii. If a reportable injury is not reported by the employer as required by 8 CCR § 342, the deadline for issuance of a Citation is six (6) months from the date that the Division learned of the violation.

iv. In rare circumstances, a Citation may be issued beyond the six-month statute of limitations, e.g., the violation is still occurring. However, the Legal Unit shall be consulted before issuing any Citation beyond the six month statute of limitations.

v. When the employer's concealment of violative condition or failure to comply with a Title 8 reporting requirements results in the DOSH's inability to discover the violation within the six-month period, the deadline to issue a citation or notice may be extended to six months from the date that DOSH discovers the violation. However, upon discovery of such a violation, DOSH has only six months to issue the citation or notice.

H. **Amending Citations**

1. When Amending is Permitted

a. After Issuance and Before Expiration of the Appeal Period

Anytime between issuance of a citation and prior to the expiration of fifteen (15) working days given to an employer to file an appeal of the DOSH's citation, compliance personnel may amend a citation to correct errors, extend the abatement period or add or withdraw citation(s) or citation items.

EXCEPTION: If the employer files an appeal and the appeal is docketed before the fifteenth (15th) day, the citation can only be amended by making a motion to the Occupational Safety and Health Appeals Board (OSHAB).

b. After Expiration of the Appeal Period

i. When No Appeal Filed

If, after the fifteen (15) working days have expired, the employer has not appealed the DOSH's citation and DOSH determines that amendment of the Citation may be necessary, compliance personnel shall contact the Legal Unit for assistance.

NOTE: If the Title 8 Safety Order or the allegation contained in the citation is amended, the issuance of the amended citation triggers another fifteen (15) working day period in which the employer can file an appeal of the amended citation.

ii. When Appeal Filed and Docketed

If it is necessary to amend a citation after OSHAB has docketed the employer's appeal, compliance personnel shall request Legal Unit assistance to amend the citation.

2. Reasons for Amending Citation

Citations may be amended for the following reasons, but only if an appeal has not been docketed:

a. Correction of Errors

i. Compliance personnel may amend a citation to correct an error in how the cited Title 8 Safety Order section and/or subsection has been referenced in the citation; an error in the text of the cited Safety Order; an error in the wording of the allegation; or any other similar type of error.

ii. A new Cal/OSHA Form 2 shall be prepared in the same manner as the original citation, with the following exceptions entered on the Cal/OSHA Form 2:

a) Enter the word "AMENDED" centered at the top of the Cal/OSHA Form 2, and

b) Enter the following phrase only once on each amended Citation of the Cal/OSHA Form 2 immediately preceding the corrected item:

"THIS CITATION AMENDS CITATION NO. ISSUED ON TO CORRECT ITEMS NO.
<u>ALL OTHER ITEMS OF THE CITATION AND PENALTY REMAIN UNCHANGED AND EFFECTIVE.</u>

THIS AMENDED CITATION SHALL BE POSTED WITH THE ORIGINAL CITATION FOR AT LEAST THREE WORKING DAYS OR UNTIL THE VIOLATIVE CONDITION IS ABATED, WHICHEVER IS LONGER."

NOTE: If the original citation contained only one Item, do not use the underlined statement.

b. Correction of Proposed Penalty Amount

i. Compliance personnel may amend a citation to correct the amount of the proposed penalty.

ii. A new Cal/OSHA Form 2 shall be prepared in the same manner as the original citation, with the following exceptions entered on the Cal/OSHA Form 2:

a) Enter the word "AMENDED" centered at the top of the Cal/OSHA Form 2, and

b) Enter the following phrase only once on each amended Citation of the Cal/OSHA Form 2 immediately preceding the corrected Item:

"THIS CITATION AMENDS CITATION NO. ISSUED ON TO CORRECT THE PROPOSED PENALTY FOR ITEMS NO.

<u>ALL OTHER ITEMS OF THE CITATION AND PENALTY REMAIN UNCHANGED AND EFFECTIVE.</u>

THIS AMENDED CITATION SHALL BE POSTED WITH THE ORIGINAL CITATION FOR AT LEAST THREE WORKING DAYS OR UNTIL THE VIOLATIVE CONDITION IS ABATED, WHICHEVER IS LONGER."

NOTE: If the original citation contained only one Item, do not use the underlined statement.

c. Extension of Abatement

i. Compliance personnel may amend a citation to extend the date for abatement based on information provided by the employer.

ii. An amended citation shall be prepared in the same manner as the original citation, with the following exceptions entered on the Cal/OSHA Form 2:

Enter the following phrase only once on each amended citation of the Cal/OSHA Form 2 immediately preceding the amended item:

"THIS CITATION AMENDS CITATION NO. ISSUED ON TO EXTEND THE ABATEMENT DATE ON ITEM(S) NO.

ALL OTHER ITEMS OF THE CITATION AND PENALTY REMAIN UNCHANGED AND EFFECTIVE.

THIS AMENDED CITATION SHALL BE POSTED WITH THE ORIGINAL CITATION FOR AT LEAST THREE WORKING DAYS OR UNTIL THE VIOLATIVE CONDITION IS ABATED, WHICHEVER IS LONGER."

NOTE: If the original citation contained only one Item, do not use the underlined statement; instead, add the following statement: "THE ITEM CITED AND PENALTY OTHERWISE REMAIN UNCHANGED AND EFFECTIVE."

iii. For extensions of the abatement date, compliance personnel must also issue the amended Cal/OSHA Forms 160 and/or 161 with the amended citation.

d. Adding Citations or Citation Items

i. If compliance personnel acquire new evidence that indicates that an additional citation or citation items should be issued, an amended citation shall be prepared.

EXCEPTION: Compliance personnel shall not issue a citation more than six months from the date that compliance personnel observed the violation, or six months from the last date on which the violation existed even if the violation no longer exists at the time compliance personnel learn of the violation. See the example shown in Section III.G.5.b.ii.

ii. The issuance of an amended citation containing additional citation(s) or citation item(s) triggers another fifteen (15) working day period for the employer to file an appeal.

e. Withdrawing Citations or Citation Items

i. If compliance personnel acquire new evidence, or review existing evidence, that indicates that a citation or citation item was issued in error, compliance personnel shall withdraw the citation if it has not become a final order of OSHAB.

ii. If the citation has already become a final order of OSHAB, compliance personnel shall request, through their

DM/SIHS/Designee, Legal Unit assistance to withdraw the citation or citation item.

I. **Issuing No Citations**

When an inspection, either partial or comprehensive, results in a finding of no violations, a Cal/OSHA Form 1AX: *Notice of No Violations After Inspection* letter will be sent to the employer to inform them of the findings. Refer to the applicable letter in Appendix A of this policy.

IV. Office or Field Issuance of Enforcement Action(s)

A. CSHOs shall prepare for management review and approval a Proposed Enforcement Action Package.

A Proposed Enforcement Action Package is the complete set of enforcement documents issued by DOSH to an employer following an inspection or investigation in which one or more violations are identified. The package includes the citation(s), proposed civil penalties, abatement requirements and deadlines, posting instructions, notice of informal conferences and appeal rights, and any other applicable enforcement documents (e.g., Information Memorandum, Order to Take Special Action, Special Order, Notice, etc.). DM/SIHS/Designee and CSHOs must sign their name legibly and print their name clearly on all required documents.

B. The Proposed Enforcement Action Packages with citation(s) must be sent by certified mail in accordance with Labor Code § 6319. Hand delivery of packages with citation(s) to the employer or an appropriate agent of the employer may be substituted for certified mailing if the DM/SIHS/Designee believes that this method would be more effective.

C. **Office Issuance of Citation(s)**

1. DM/SIHS/Designee must ensure that all citations, issued to an employer from a District Office will be delivered via certified mail (return receipt requested). Compliance personnel must sign their name legibly on the line provided and print their name below the signature line on the Cal/OSHA Form 2 on office-issued citation(s). DM/SIHS/Designee must sign their name legibly on the line provided and print their name below the signature line on the Cal/OSHA Form 2 on office-issued citation(s).

2. For Regulatory and General violations resulting in a citation not abated during the inspection, a single Cal/OSHA Form 160 shall be sent to the employer along with the citation.

3. For each Serious violation resulting in a citation not abated during the inspection, a Cal/OSHA Form 161 shall be sent to the employer along with the citation.

   EXCEPTION: If a Serious violation resulting in a citation was not abated during the inspection and an abatement date of less than six (6) days was fixed, a Cal/OSHA Form 161 shall not be sent with the citation. Instead, a follow-up inspection shall be conducted at the end of the period of time fixed for abatement of the serious violation or within thirty (30) days thereafter. See Chapter 14: *Other Types of Inspections*.

4. If a Serious violation resulting in a citation was abated during the inspection, a Cal/OSHA Form 161A shall be sent to the employer along with the citation.

   NOTE: If the citation cannot be delivered by certified mail, compliance personnel shall (1) attempt to hand-deliver the citation, or (2) request that the Bureau of Investigations (BOI) attempt delivery. Overnight or two-day delivery by courier service can be used only after the aforementioned delivery methods have been exhausted. District Offices should not use overnight mail, in lieu of certified mail, except in the situations set forth above.

D. **Field Issuance of Citation(s)**

1. When a citation is field-issued, compliance personnel must complete a Cal/OSHA Form 2X: *Declaration of Service*, provide a copy of the Declaration to the employer, and place the original Declaration in the employer's case file. Compliance personnel must sign their name legibly on the line provided and print their name below the signature line on the Cal/OSHA Form 2 on field-issued citation(s). DM/SIHS/Designee must sign their name legibly on the line provided and print their name below the signature line on the Cal/OSHA Form 2 on field-issued citation(s).

2. For Regulatory and General violations resulting in a citation not abated during the inspection, a single Cal/OSHA Form 160 shall be given to the employer along with the citation.

3. For Serious violations resulting in a citation not abated during the inspection, a single Cal/OSHA Form 161 shall be given to the employer along with the citation.

4. ***EXCEPTION***: If a Serious violation resulting in a citation was not abated during the inspection, and an abatement date of less than six (6) days was fixed, a Cal/OSHA Form 161 shall not be given with the citation. Instead, a follow-up inspection shall be conducted at the end of the period of time

fixed for abatement of the Serious violation or within thirty (30) days thereafter. See Chapter 14.

5. If a Serious violation resulting in a citation was abated during the inspection, a Cal/OSHA Form 161A shall be given to the employer along with the citation.

Appendices:

A. Proposed Penalty

Appendix A

PROPOSED PENALTY

It is DOSH's policy to assess a civil penalty for each serious, repeat, willful, failure-to-abate violation and for the following regulatory violations: failure to report carcinogen use; failure of a physician to report a pesticide-related illness; failure to conform to asbestos-related registration requirements, and failure to obtain a construction activity permit. Penalties for general and regulatory violations, which are not listed above, will also be proposed unless a Notice in Lieu of a Citation is issued by the Division in accordance with Labor Code § 6317 and Chapter 22: *Notice*.

DOSH shall administer this policy in compliance with all applicable laws, rules, and guidance:

- California Code of Regulations, Title 8, Section 333 et seq.
- California Labor Code, Sections 6317, 6319, 6427 et seq.

This appendix outlines the procedures for assessing penalties using a formatted structure to ensure accuracy and consistency.

I. Responsibilities

A. Compliance Personnel Responsibilities

1. The Cal/OSHA Form 10, entitled *Proposed Penalty Worksheet*, serves as a tool for calculating proposed civil penalties. Compliance Safety and Health Officers (CSHOs) must determine the proposed penalties for each violation of the California Labor Code (LAB) and the Title 8 of the California Code of Regulations (8 CCR) identified during a workplace inspection. The completed Cal/OSHA Form 10 must be included in the case file.

2. The Cal/OSHA Form 10 does not have to be completed for an inspection which resulted in violations for which no civil penalties are proposed.

B. District Manager and/or Senior Industrial Hygienist Supervisor Responsibilities

The DM/SIHS/Designee must review, prior to issuance of proposed civil penalties, the penalty calculations contained on the Cal/OSHA Form 10 to ensure that the violation for which a civil penalty is proposed is properly

classified and that the civil penalty is calculated in accordance with the procedures found in this policy and is arithmetically correct.

1. Office-Issued Citations – By Certified Mail

2. Field-Issued Citations – By Hand Delivery

C. Regional Manager Responsibilities

The Regional Manager (RM) shall monitor civil penalty assessments throughout the Region to ensure consistent application of the procedures found in this policy.

II. Specific Violations

A. Regulatory Violation

There are seven types of regulatory violations for which the following gravity-based penalties are required and shall be entered in Item 12 on the Cal/OSHA Form 10:

1. Failure of the employer to report a serious injury or illness, or death ($5000);

2. Failure to report carcinogen use ($2500 for each carcinogen);

3. Carcinogen, other than reporting ($1000);

4. Failure of a physician to report a pesticide-related illness ($250);

5. Failure to conform to asbestos-related registration requirements ($1250);

6. Failure to obtain a construction activity permit ($1250); and

7. Any other non-carcinogen or non-pesticide-related illness not categorized above ($500), e.g., failure to post or failure to report injury or illness by a responding governmental agency.

   NOTE: All of the above types of regulatory violations shall be adjusted for good faith, size and history, except for the failure of a physician to report a pesticide-related illness and failure of the employer to report a serious injury or illness, or death.

B. **General Violation**

1. For each general violation, a civil penalty shall be proposed based on the severity, extent and likelihood of the violation. See the Appendices A, B, and C of Chapter 7: *Inspection Procedures* for the criteria to be used in determining the severity, extent and likelihood of a violation.

2. Civil penalties for general violations are as follows:

a. Severity	• Low: $1,000 • Medium: $1,500 • High: $2,000
b. Extent – Modification Factor	• Low: -25% of severity • Medium: 0 • High: +25% of severity
c. Likelihood – Modification Factor	• Low: -25% of severity • Medium: 0 • High: +25% of severity

3. Penalties for general violations may be waived if the employer at the time of DOSH's inspection was making a good faith effort to abate the alleged violation pursuant to written recommendations of the DOSH Consultation Service (8 CCR § 336[d][4][A]). When the penalty for an Item is waived, enter "Penalty Waived-Consultation" on Item 9 through 11.

   NOTE: Examples of acceptable evidence of good faith effort include a timely attempt to abate the violation, copies of purchase orders for equipment to correct violative conditions and written instructions to modify, revise or direct procedures or processes to correct violative conditions.

C. **Serious Violation**

1. For each serious violation, a civil penalty shall be proposed based on the severity, extent and likelihood of the violation. See Appendices A, B, and C of Chapter 7 for the criteria to be used in determining the severity, extent and likelihood of a violation. There are two types of serious violations for purposes of proposing civil penalties:

   a. Serious (Non-carcinogen)

   b. Serious (Carcinogen)

2. Civil penalties for serious violations based on severity, extent, and likelihood are as follows:

a. Severity	• Serious (Non-carcinogen): $18,000 (Gravity-based Penalty) ***NOTE***: In determining the gravity-based penalty for a serious (non-carcinogen) violation that the Division determines caused a death or a serious injury, illness or exposure, the adjustments to the severity-based penalty for extent and likelihood shall only be rated as moderate or high, and in no case shall the gravity-based penalty be less than $18,000. Further reductions to the gravity-based penalty shall not be made for any reason other than the size of the employer being cited. • Serious (Carcinogen): $18,000 ***NOTE***: The total civil penalty for serious carcinogen violations is $18,000 and shall not be modified or adjusted for any reason.
b. Extent – Modification Factor	• Low: -25% of severity • Medium: 0 • High: +25% of severity
c. Likelihood – Modification Factor	• Low: -25% of severity • Medium: 0 • High: +25% of severity

D. **Repeat Violation**

1. Minimum and Maximum Penalties

   a. The maximum penalty for any repeat violation shall not exceed $162,851.

      NOTE: Any employer who is cited for a repeat violation of any occupational safety or health standard, order or special order, or

Section 25910 of the Health and Safety Code, shall not receive any adjustment of the penalty for history or good faith.

b. If a regulatory, general or serious violation is a repeat violation, the gravity-based penalty shall be multiplied by the following factors:

Repeat	Factor
1st	2
2nd	4
3rd or more	10

2. For Carcinogens

a. Repeat Regulatory Violations Concerning a Carcinogen Reporting Requirement

If the repeat regulatory violation concerns a carcinogen reporting requirement, the penalty shall be proposed as follows:

Repeat	Factor
1st	$5,000
2nd	$10,000
3rd or more	$20,000

NOTE: Penalties for initial failure to report carcinogen violations are subject to adjustment for good faith, size and history. Penalties for repeat failure to report carcinogen violations are not subject to adjustment for good faith, size and history. When calculating the penalty for repeat regulatory violations concerning a carcinogen reporting requirement, transfer the penalty amount in Item 13 to Item 18 on the Cal/OSHA Form 10.

b. Repeat Serious Violations Respecting the Use of a Carcinogen

If the repeat serious violation concerns the use of a carcinogen, the penalty shall be proposed as follows:

Repeat	Factor
1st	$10,000
2nd	$20,000
3rd or more	$40,000

NOTE: Penalties for repeat serious violations for use of a carcinogen are not subject to adjustment good faith, size and history.

3. Violation Causing Death or Serious Injury, Illness or Exposure

If DOSH determines that a repeat violation caused death or serious injury, illness or exposure, the gravity-based penalty shall not be reduced for any reason other than the size of the employer being cited.

E. **Willful Violation**

1. General Issues

   If a regulatory, general or serious violation is determined to be willful, the proposed penalty is multiplied by 5.

2. Minimum and Maximum Penalty

   a. The minimum penalty for any willful violation shall not be less than $11,632.

   b. The maximum penalty for any willful violation shall not exceed $162,851.

3. Violation Causing Death or Serious Injury, Illness or Exposure

   If DOSH determines that a willful violation caused death or serious injury, illness or exposure, the gravity-based penalty shall not be reduced for any reason other than the size of the employer being cited.

F. **Abatement Credit**

1. Regulatory

   An abatement credit shall not be granted for any regulatory violation.

2. General and Serious

   The gravity-based penalty for general violations is reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The resultant penalty is termed a "proposed penalty."

   For serious violations not listed below, a 50% abatement credit shall not be granted unless the employer has done either of the following:

   a. Abated the serious violation at the time of the initial or a subsequent visit during an inspection and verified by compliance personnel.

   b. Submitted a statement signed under penalty of perjury, together with supporting evidence within the time fixed for abatement in the citation

issued and received within 10 working days after the end of this time period.

Abatement credit shall not be granted for the following types of violations:

a. General and serious violations designated as repeat or willful,

b. Serious violations where extent and likelihood are rated high,

c. Serious violations respecting the use of a carcinogen, and

d. Serious violations causing death, serious injury, illness or exposure.

G. **Failure to Abate**

1. General Issues

a. All civil penalty calculations for failure to abate a previously cited violation are to be performed on the original Cal/OSHA Form 10.

b. When civil penalties are issued for failure- to-abate, the DM/SIHS/Designee shall send a cover letter to the employer with Notification of Failure to Abate Alleged Violations specifying the following:

i. The items previously cited which are still in violation; and

ii. The requirement that the employer immediately abate the previously cited items which are still in violation.

NOTE: The failure to abate information on the Cal/OSHA Form 10 shall be used to complete the Notification of Failure to Abate Alleged Violations.

c. The daily penalty for failure to abate a regulatory or general violation may be further reduced up to 90% for the first 120 days that the violation continues to exist and up to 50% thereafter where the violation does not bear a direct relationship to employee health and safety.

EXCEPTION: If the severity of the violation is high and exposure to employees is continuous, or the employer has exhibited a high degree of negligence in failing to correct the violation, the penalty shall not be further reduced.

d. The daily penalty for failure to abate a serious violation may be reduced up to 50% where extent and likelihood are calculated as low and the good faith and history are calculated as good, except where the gravity of the violation is high and exposure to employees is continuous, or the employer has exhibited a high degree of negligence in failing to correct the violation.

2. Failure-to-Abate Penalties

a. Maximum Daily Penalty

Penalties for a failure-to-abate violation shall not exceed $15,000 per day (8 CCR § 336[f]).

b. Regulatory Failure to Abate

To calculate the failure-to-abate penalty for regulatory violations, start with the gravity-based penalty in Item 12 of the Cal/OSHA Form 10 and then complete Items 19 through 26.

c. General Failure to Abate

To calculate a failure-to-abate general violation, see Items 19 through 26.

d. Serious Failure to Abate

i. For any employer who submits a signed statement affirming compliance with the abatement terms for a serious violation and has been found upon reinspection not to have abated the violation, the additional civil penalty for failure to abate shall not be adjusted for good faith of the employer or history of previous violations.

ii. If DOSH determines that death or serious injury, illness or exposure was caused by failure to abate a serious violation within the time permitted for its abatement, the penalty shall not be reduced for any reason other than the size of the business of the employer being charged.

III. Special Penalty Provisions

A. **Violation of a Crane Standard, Order, or Special Order Causing Death or Serious Injury**

1. If a violation of a crane standard, order, or special order is classified as repeat serious or repeat willful, and DOSH has determined that the violation caused death or serious injury as defined pursuant to Labor Code Section 6302, the penalty shall be $162,851. This penalty is not subject to adjustment.

2. If the employer fails to abate a serious violation of a crane standard, order, or special order, and DOSH has determined that the failure to abate caused death or serious injury as defined pursuant to Labor Code Section 6302, the penalty shall be $14,000 for each calendar day. This penalty is not subject to adjustment.

B. **Serious Tower Crane Violations**

For any employer who violates any tower crane standard, order or special order, and such violation is determined to be a serious violation, the Division shall propose a civil penalty of $18,000. This penalty is not subject to adjustment for Good Faith, Size and History. If Items 13 through 18 are applicable, follow the instructions for regulatory violations (Non-carcinogen/pesticide-related illness). If Items 19 through 26A are applicable, follow the instructions for serious (Carcinogen) violations.

C. **Field Sanitation Violations**

If a violation of 8 CCR § 3457(c)(1)(A), (c)(1)(B), (c)(1)(C), (c)(2)(A), (c)(2)(B), (c)(3)(B), (c)(3)(C), (c)(3)(G)(1), (c)(3)(G)(2) and (c)(3)(G)(3) is classified as general, the penalty shall be $750. This penalty is not subject to adjustment. If Items 13 through 26A are applicable, follow the procedures for repeat, willful or failure to abate general violations. If the foregoing violations are classified as serious, follow the procedure for Serious (Noncarcinogen). However, the minimum civil penalty for any serious violation shall be no less than $750.

D. **Discretionary Penalty Reduction for Multiple Violations Pertaining to a Single Hazard**

1. Under certain circumstances 8 CCR § 336(k) permits DOSH to reduce penalties for multiple violations based on a single hazard. Generally, the purpose of this section is to permit reduction of penalties based on the same hazard on a case- by-case basis, where the amount of the cumulative total would be unfair given the magnitude of the violations, or where a lower amount would be sufficient to further compliance with the Occupational Safety and Health Act.

2. This penalty reduction does not apply to the following:

    a. Violations which have resulted in death or serious injury, or illness.

b. Serious carcinogen violations.

c. All other violations which have resulted in serious exposure.

d. Willful violations.

e. Any employer who does not have an operative Injury and Illness Prevention Program at the time of the inspection.

NOTE: A reduction can be applied to repeat or failure-to-abate penalties which are not disqualified by Items (1) through (5), but only under extraordinary circumstances and only with the written approval of the Deputy Chief of the Enforcement Branch.

3. To apply the discretionary reduction, determine which violations are based on a single hazard. The violation bearing the highest penalty shall not be reduced. Penalties for the remaining violations based on the same hazard may be reduced as follows:

   a. For serious violations not involving a serious exposure, the penalty may be reduced up to 90%.

   b. For regulatory and general violations, the civil penalty may be reduced up to 100%, except where a minimum civil penalty is mandated by law.

4. For each penalty to be reduced, compute and enter the unreduced penalty through Item 17. Enter the reduced penalty in Item 18 and place an asterisk next to the amount entered. Reference the asterisk in the upper left hand corner of the form with the following note:

   *Discretionary penalty reduction, as permitted in § 336(k) "multiple violations pertaining to a single hazard."

E. **Injury and Illness Prevention Program (IIPP) Violations**

1. Penalty Exemption for New Employer in the State

   No civil penalty shall be proposed for any new employer in the State 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 8 CCR § 3203 if the employer has made a good faith effort to comply with the requirements found in § 3203.

2. Model IIPP for Non-High Hazard Employment

No civil penalty shall be proposed for an employer who adopts, posts and implements in good faith, the Model IIPP for Non-High Hazard Employment prepared by DOSH pursuant to Labor Code § 6401.7(j)(1) for a first violation of 8 CCR § 3203. See Chapter 13: *Enforcement of Injury and Illness Prevention Program*.

F. Governmental Entities

Governmental entities are not exempt from the imposition of civil penalties.