

§10106.1. Routine and Targeted Audit Subject Selection; Complaint Tracking; Appeal of Targeted Audit Selection.

For audits conducted on or after January 1, 2003:

(a) The Division of Workers' Compensation shall maintain and update annually a list of known adjusting locations of California workers' compensation claims. The list will be based on information provided to the Division in Annual Reports of Inventory submitted pursuant to Section 10104, data submitted to the Division's Workers' Compensation Information System pursuant to Labor Code Section 138.6, and any other sources of information available. The list shall include all known adjusting locations, located in or out of California, of insurers, self-administered self-insured employers, and third-party administrators that administer California workers' compensation claims.

(b) The Audit Unit shall select each adjusting location from the list of adjusting locations for routine profile audit review pursuant to Labor Code Section 129(b)(1) at least once every five years. Audit subjects may be selected in any order, and routine audits may be scheduled by the Audit Unit in a manner to best minimize travel expenses and utilize audit personnel efficiently.

(1) For routine audit subject selection pursuant to Labor Code Section 129(b)(1), if the adjusting location includes claims of more than one insurance underwriting company, self-insured employer, or third-party administrator at the location and all claims at that location share the same local management, the location will be considered as one audit subject.

(2) Eligibility under this subsection for removal from the pool for routine audit subject selection shall not bar the targeted selection of the audit subject pursuant to subsections (c)(2), (c)(3), (c)(4), Labor Code Section 129(b)(3), or for investigation and/or audit pursuant to Section 10106.5 of these regulations.

(c) The Audit Unit shall target audit subjects based on prior audit results pursuant to Labor Code Section 129(b)(2) and subsection (c)(1) of this regulation. Pursuant to Labor Code Section 129(b)(3), the Audit Unit may also target audit subjects based on subsections (c)(2) through (c)(5) of this regulation.

(1) Audit results shall be used independently as factual information to support selection of a claims administrator for a return, targeted audit as follows:

(A) When a final audit report is issued, the report will include a final performance rating. The final performance rating will be calculated in the same manner as the performance audit review performance rating as set forth in Section 10107.1(c)(3), except that the rating shall be determined based on audit findings from all randomly selected claims, including additional claims selected pursuant to Sections 10107.1(d)(1) and (e)(1).

§10106.1 (Audit) Effective May 1, 2003

(B) If the audit subject's performance rating calculated pursuant to Section 10107.1(c)(3) or (d)(3) fails to meet or exceed the worst 10% of performance ratings for all audits conducted in the three calendar years before the year preceding the current audit, the Audit Unit will return for a targeted audit of the audit subject within two years of the date the audit findings become final.

(C) In the final audit report, the Audit Unit shall notify the audit subject that a return, targeted audit will be conducted based upon its performance rating. The return targeted audit shall be conducted in addition to any penalties assessed as a result of the qualifying audit.

(D) Any appeal of the audit subject's selection for a targeted audit based upon the audit findings must be made in the same manner as an appeal of the Notice of Penalty Assessment as set forth in Section 10115.1, and must be made within seven days of receipt of the audit findings upon which the selection for targeted audit is based.

(2) Audit subjects may be selected for targeted audit based on final decisions or findings of the WCAB issued pursuant to Labor Code Section 5814 as follows:

(A) The Division of Workers' Compensation will regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor Code Section 5814 to the Audit Unit.

(B) Approximately once per year the audit unit will establish a list of claims administrators identified for potential targeted audit based on the documentation provided pursuant to subsection (c)(2)(A). For each adjusting location, the total number of decisions, findings, and/or awards issued pursuant to Labor Code Section 5814 shall be compared to the total number of claims reported at that claims adjusting location for the last year for that potential audit subject, as indicated on the Annual Report of Inventory or the Self Insurer's Annual Report, or as indicated in the data reported by the claims administrator to the Division of Workers' Compensation as part of the Workers' Compensation Information System pursuant to Labor Code Section 138.6. The Audit Unit may obtain data runs or claim logs from the claims administrator to verify the accuracy of the claims reported.

(C) The Audit Unit may select for target audit the highest-ranking subjects, based on the ratios of decisions, findings, and/or awards issued pursuant to Labor Code Section 5814 compared to the number of claims reported at the adjusting location, from the list. The Audit Unit may consider the results and recency of prior audits at the adjusting location, the resources of the Audit Unit, and the need to conduct routine audits in scheduling targeted audits. The Audit Unit is not required to audit every claims administrator on the list, nor is it required to audit in the order in which claims administrators appear on the list.

§10106.1 (Audit) Effective May 1, 2003

(D) The Audit Unit shall send the audit subject selected for targeted audit a Notice of Audit in accordance with §10107.1(a).

(3) The Audit Unit may also target audit subjects based on credible complaints and/or information received by the Division of Workers' Compensation that indicate possible claims handling violations, except that the Audit Unit will not target audit subjects based only on anonymous complaints unless the complaint(s) is supported by credible documentation. Complaints received by the Division of Workers' Compensation may be kept confidential if confidentiality is requested by the complaining party. In order to establish priorities for audits pursuant to this subsection, the Audit Unit shall review and compile complaints and information that indicate claims administrator adjusting locations are failing to meet their obligations under Divisions 1 or 4 of the Labor Code or regulations of the administrative director. Approximately once per year, complaints and information alleging improper claims handling shall be tracked and compiled into a list of claims administrators identified for potential target audits in two manners:

(A) On the basis of overall gravity and frequency of potential violations as measured by assigned points:

- (i) Complaints or information indicating possible violations of the kind which, if found on audit, would be subject to the assessment of administrative penalties or issuance of notices of compensation due shall be weighted on the basis of apparent severity of the alleged violation. One point shall be assigned for each \$100.00 in penalties assessable under the corresponding violations in Sections 10111 through 10111.2 of these regulations.
- (ii) The Audit Unit may select for target audit the highest-ranking subjects, based on points assigned compared to the number of claims reported at the adjusting location. The Audit Unit may consider the results and recency of prior audits at the adjusting location, the resources of the Audit Unit, and the need to conduct routine audits in scheduling targeted audits. The Audit Unit is not required to audit every claims administrator on the list, nor is it required to audit in the order in which claims administrators appear on the list.
- (iii) The Audit Unit shall send the audit subject selected for targeted audit a Notice of Audit in accordance with §10107.1(a).

(B) On the basis of credible complaints or information indicating claims handling for which a civil penalty may be assessed pursuant to Labor Code Section 129.5(e):

- (i) The Audit Unit may select for target audit the highest-ranking subjects based on the ratios of complaints or information

regarding specific claims practices compared to the number of claims. In considering the potential for specific poor claims practices, the Audit Unit may consider the results and recency of prior audits at the adjusting location, the resources of the Audit Unit, and the need to conduct routine audits in scheduling targeted audits. The Audit Unit is not required to audit every claims administrator on the list, nor is it required to audit in the order in which claims administrators appear on the list.

- (ii) The Audit Unit shall send the audit subject selected for targeted audit a Notice of Audit in accordance with §10107.1(a).

(4) The Audit Unit may also select targeted audit subjects based on data from the Workers' Compensation Information System which indicates the claims administrator is failing to meet its obligations, including, but not limited to, high percentages of possible violations compared to other claims administrators. Possible violations include high percentages of apparent late first and/or subsequent indemnity payments, either overall or by class of indemnity, and/or high ratios of denied claims to indemnity claims

(5) The Audit Unit may also target an audit subject for any of the following:

- (A) Failure to produce a claim for the Audit Unit within 30 days of receipt of a written request in a profile audit review conducted pursuant to Labor Code Section 129(b).
- (B) Failure to pay or appeal pursuant to Section 10115 any Notice of Compensation Due issued by the Audit Unit.

(6) For target audits, the Audit Unit may randomly select claims pursuant to Section 10107.1 of these regulations and/or target claims based on information indicating the possible existence of specific claims handling practices.

(7) For target audits and/or for targeted claims in any audit, the Audit Unit is not required to audit an entire claim file, but may audit only those parts of the claim file that pertain to the complaint or to a specific type of possible violation(s).

(8) The Notice of Audit for a targeted audit selected pursuant to subsections (c)(2) through (c)(5) may be appealed as follows:

- (A) Within 7 days after receiving a Notice of Audit the claims administrator may appeal its selection for audit by filing with the Administrative Director and serving on the Audit Unit a request for an appeals conference or a request for a written decision without a conference.

§10106.1 (Audit) Effective May 1, 2003

(B) Within 21 days after the request for a written decision or an appeals conference is filed, the appellant shall file with the Administrative Director and serve the Audit Unit with a written statement setting forth the legal and factual basis of the appeal, and including documentation or other evidence which supports the appellant's position.

(C) If a request for an appeals conference or a request for a written decision without conference or if the written statement and documentation are not timely filed and served under Section 10115.1(g)(1) and (g)(2), the claims administrator shall be deemed to have waived any issue concerning its selection for audit. The claims administrator will be precluded from raising the issue at any subsequent appeals of Notices of Penalty Assessment or Notices of Compensation Due.

(D) Service and filing are timely if the documents are placed in the United States mail, first class postage prepaid, or personally delivered between the hours of 8:00 a.m. and 5:00 p.m., within the periods specified in Section 10115.1(g). The original and all copies of any filing shall attach proof of service as provided in Section 10975.

(E) The appeal process shall be governed by Section 10115.2.

NOTE: Authority cited: Sections 59, 129, 129.5, 133, 138.6, 5307.3, Labor Code.
Reference: Sections 7, 53, 111, 124, 129 and 129.5, Labor Code; and Sections 11180, 11181 and 11182, Government Code.

§10107.1. Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure.

For audits conducted on or after January 1, 2003:

(a) Once a subject has been selected for an audit, the Audit Unit shall serve a Notice of Audit on the claims administrator. The Notice shall inform the administrator of its selection for audit, and may include a request to provide the Audit Unit with a claim log or logs. If the Audit Unit has requested claim logs, the audit subject shall provide two copies of the specified claim log(s) within fourteen days of the date of the receipt of the Notice.

(b) At least 14 days before the audit is scheduled, the Audit Unit shall send the audit subject a Notice of Audit Commencement identifying the claims to be audited. The audit shall commence no less than fourteen days from the date the Notice was sent, unless the audit subject and Audit Unit agrees to earlier commencement.

(c) For profile audit reviews conducted pursuant to Labor Code Section 129(b)(1), the Audit Unit shall randomly select samples of indemnity claims from the most recent three years of the audit subject's claim logs or from the list of claims for those years as reported to the Division of Workers' Compensation pursuant to Labor Code Section 138.6 as part of the Workers' Compensation Information System. If any of the years have been the subject of a previous audit, claims will be randomly selected from the most recent unaudited year(s).

(1) The initial number of indemnity claims randomly selected for audit will be determined based on the following table:

Population	Sample Size
5 or less	all
6 – 10	1 less than total
11 – 13	2 less than total
14 – 16	3 less than total
17 – 18	4 less than total
19 – 20	5 less than total
21 – 23	6 less than total
24	17
25 – 26	18
27 – 29	19
30 – 31	20
32 – 33	21
34 – 36	22
37 – 39	23

§10107.1 (Audit) Effective May 1, 2003

40 – 41	24
42 – 44	25
45 – 48	26
49 – 51	27
52 – 55	28
56 – 58	29
59 – 62	30
63 – 67	31
68 – 72	32
73 – 77	33
78 – 82	34
83 – 88	35
89 – 95	36
96 – 102	37
103 – 110	38
111 – 119	39
120 – 128	40
129 – 139	41
140 – 151	42
152 – 164	43
165 – 179	44
180 – 197	45
198 – 217	46
218 – 241	47
242 – 269	48
270 – 304	49
305 – 346	50
347 – 399	51
400 – 468	52
469 – 562	53
563 – 696	54
697 – 905	55
906 - 1,272	56
1,273 - 2,091	57
2,092 - 5,530	58
5,531 +	59

- (2) In addition to the randomly selected indemnity claims, the Audit Unit may audit any claims for which it has received a complaint or information indicating a failure to pay indemnity, including any companion claim needed to ascertain the extent to which benefits have been provided.
- (3) After reviewing the claims selected pursuant to subsection (1), the Audit Unit shall calculate the audit subject's profile audit review performance rating based on its review of the randomly selected claims. The profile audit review performance rating will be calculated as follows:

(A) The factor for the failure to pay accrued and undisputed indemnity shall be determined by

(i-a) Dividing the number of randomly selected claims with violations involving the failure to pay indemnity by the number of randomly selected claims with accrued and payable indemnity, whether paid or not, to produce a frequency rate.

(i-b) Dividing the total amount of unpaid indemnity in randomly selected claims by the number of randomly selected claims with accrued and payable indemnity, whether paid or not, to produce an average amount of unpaid indemnity per file with the obligation to pay indemnity.

(i-c) Dividing the average amount of unpaid indemnity per randomly selected audited claim with the obligation to pay indemnity for the audit subject by the average amount of unpaid indemnity per randomly selected audited claim for all audit subjects for the three calendar years before the year preceding the year in which the current audit is being conducted, to produce a severity rate.

(i-d) Multiplying the frequency rate by the severity rate by a modifier of 2 to determine the factor for the failure to pay accrued and undisputed indemnity.

(ii) The factor for the late first payment of temporary disability indemnity and issuance of first temporary disability notices shall be determined by dividing the number of randomly selected claims with violations involving the late first payment of temporary disability indemnity, or in claims that involve salary continuation in lieu of first temporary disability payments, the late issuance of the first temporary disability notice by the number of randomly selected claims in which temporary disability payments or first temporary disability notices were issued.

(iii) The factor for the late first payment of permanent disability indemnity, vocational rehabilitation maintenance allowance, and death benefits shall be determined by dividing the numbers of randomly selected claims with violations involving late first payments of those benefits by the numbers of randomly selected claims with payments for those benefits. In calculation of this factor, claims shall be counted for each type of exposure and late first payment.

(iv) The factor for late subsequent indemnity payments shall be determined by dividing the number of randomly selected claims with violations involving late indemnity payments subsequent to first payment by the number of randomly selected claims with subsequent indemnity payments.

(v) The factor for failure to comply with requirements for notices advising injured employees of the process for selecting Agreed Medical Examiners and/or Qualified Medical Examiners once the employees' injuries have reached a permanent and stationary status, and for failure to comply with the requirements for notices advising injured workers of potential eligibility for vocational rehabilitation pursuant to Labor Code Section 4637 shall be determined by dividing the numbers of randomly selected claims with violations involving the

§10107.1 (Audit) Effective May 1, 2003

failure to issue the notices by the numbers of randomly selected claims with the requirement to issue the notices. In calculation of this factor, claims shall be counted for each type of exposure and violation.

(vi) The audit subject's profile audit review performance rating will be determined by adding the factors calculated pursuant to subsections (c)(3)(A)(i) through (c)(3)(A)(v).

(B) If the audit subject's profile audit review performance rating meets or exceeds the worst 20% of performance ratings for all final audit reports issued over the three calendar years before the year preceding the current audit, the Audit Unit will issue Notices of Compensation Due pursuant to Section 10110 but will assess no administrative penalties for violations found in the profile audit review.

(C) If the audit subject's profile audit review performance rating fails to meet or exceed the rating of the worst 20% of performance ratings as calculated based on all final audit findings as published in the Annual DWC Audit Reports over the three calendar years before the year preceding the current audit, the Audit Unit will conduct a Full Compliance Audit by randomly selecting and auditing an additional sample of indemnity claims pursuant to subsection (d). Written notification of the Audit Unit's intent to proceed to a Full Compliance Audit, showing the calculation of the profile audit review performance rating, will be provided to the audit in time for the timely filing of an objection. The audit subject may dispute whether or not a Full Compliance Audit is merited under this subsection at a post-profile audit review conference. Following the post-profile audit review conference, the Audit Unit may continue with the Full Compliance Audit. The audit subject may appeal the issues pursuant to Section 10115.1 following the issuance of the final audit report. Failure of the audit subject to raise issues related to failing to meet or exceed the profile audit review performance standard during the post-profile audit review conference shall constitute a waiver of appeal on those issues.

(d) If the audit subjects fails to meet or exceed the profile audit review performance standard, the Audit Unit shall conduct a Full Compliance Audit by selecting and auditing an additional sample of indemnity claims.

(1) The total number of indemnity claims randomly selected for audit, including the number audited pursuant to subsection (c)(1), will be determined based on the following table:

Population	Sample Size
8 or less	all
9 – 15	1 less than total

§10107.1 (Audit) Effective May 1, 2003

16 – 19	2 less than total
20 – 23	3 less than total
24 – 27	4 less than total
28 – 30	5 less than total
31 – 33	6 less than total
34 – 36	7 less than total
37 – 38	8 less than total
39 – 41	9 less than total
42	32
43 – 44	33
45	34
46 – 47	35
48 – 49	36
50 – 51	37
52 – 53	38
54 – 55	39
56 – 57	40
58 – 59	41
60 – 61	42
62 – 63	43
64 – 65	44
66 – 67	45
68 – 70	46
71 – 72	47
73 – 74	48
75 – 77	49
78 – 79	50
80 – 82	51
83 – 84	52
85 – 87	53
88 – 89	54
90 – 92	55
93 – 95	56
96 – 98	57
99 – 101	58
102 – 104	59
105 – 107	60
108 – 110	61
111 – 114	62
115 – 117	63
118 – 120	64
121 – 124	65
125 – 128	66
129 – 131	67
132 – 135	68

§10107.1 (Audit) Effective May 1, 2003

136 – 139	69
140 – 143	70
144 – 148	71
149 – 152	72
153 – 156	73
157 – 161	74
162 – 166	75
167 – 171	76
172 – 176	77
177 – 181	78
182 – 187	79
188 – 192	80
193 – 198	81
199 – 204	82
205 – 210	83
211 – 217	84
218 – 223	85
224 – 230	86
231 – 238	87
239 – 245	88
246 – 253	89
254 – 261	90
262 – 270	91
271 – 279	92
280 – 288	93
289 – 298	94
299 – 308	95
309 – 319	96
320 – 330	97
331 – 342	98
343 – 354	99
355 – 367	100
368 – 381	101
382 – 396	102
397 – 411	103
412 – 427	104
428 – 444	105
445 – 463	106
464 – 482	107
483 – 503	108
504 – 525	109
526 – 549	110
550 – 575	111
576 – 603	112
604 – 633	113

§10107.1 (Audit) Effective May 1, 2003

634 – 665	114
666 – 700	115
701 – 739	116
740 – 781	117
782 – 827	118
828 – 879	119
880 – 936	120
937 - 1,000	121
1,001 - 1,072	122
1,073 - 1,154	123
1,155 - 1,248	124
1,249 - 1,356	125
1,357 - 1,483	126
1,484 - 1,633	127
1,634 - 1,814	128
1,815 - 2,036	129
2,037 - 2,315	130
2,316 - 2,677	131
2,678 - 3,163	132
3,164 - 3,852	133
3,853 - 4,904	134
4,905 - 6,710	135
6,711 - 10,530	136
10,531 - 23,993	137
23,994 +	138

(2) In addition to the randomly selected indemnity claims, the Audit Unit may audit any claims for which it has received a complaint or information indicating a failure to pay indemnity or late-paid indemnity, including any companion claim needed to ascertain the extent to which benefits have been provided.

(3) After reviewing the claims selected pursuant to subsection (1), the Audit Unit shall calculate the audit subject's full compliance audit performance rating.

(A) The audit subject's full compliance audit performance rating will be calculated pursuant to subsection (c)(3)(A), except that it shall be based on the review of all claims selected pursuant to subsection (d)(1).

(B) If the audit subject's full compliance audit performance rating meets or exceeds the worst 10% of performance ratings for all final audit reports issued over the three calendar years before the year preceding the current audit, the Audit Unit will issue Notices of Compensation Due pursuant to Section 10110 and will assess administrative penalties only for violations involving unpaid and late paid compensation, pursuant to Labor Code Section 129.5(c)(2).

§10107.1 (Audit) Effective May 1, 2003

(e) If the audit subject's full compliance audit performance rating fails to meet or exceed the rating of the worst 10% of performance ratings for all final audit reports issued over the three calendar years before the year preceding the current audit, the Audit Unit will audit all claims selected for audit for all violations, and also randomly select a sample of denied claims. Notification of the Audit Unit's intent to audit a sample of denied claims and assess penalties pursuant to Labor Code Section 129.5(c)(3) will be provided to the audit subject based on findings at a meet and confer audit review conference. At that time the audit subject may dispute whether or not it met or exceeded the Full Compliance Audit performance standard. Following the meet and confer audit review conference, the Audit Unit may continue with the Full Compliance Audit. The audit subject may appeal pursuant to Section 10115.1 following the issuance of the final audit report. Failure of the audit subject to raise issues related to failing to meet or exceed the full compliance audit performance standard during the meet and confer audit review conference shall constitute a waiver of appeal on those issues.

(1) The number of denied claims randomly selected for audit will be based on the following table:

Population	Sample Size
6 or less	all
7 – 10	1 less than total
11 – 14	2 less than total
15 – 17	3 less than total
18	14
19 – 20	15
21	16
22 – 23	17
24 – 25	18
26 – 27	19
28 - 29	20
30 - 31	21
32 - 33	22
34 - 36	23
37 - 38	24
39 - 41	25
42 - 43	26
44 - 46	27
47 - 49	28
50 - 52	29
53 - 55	30
56 - 59	31

§10107.1 (Audit) Effective May 1, 2003

60 - 63	32
64 - 67	33
68 - 71	34
72 - 75	35
76 - 80	36
81 - 85	37
86 - 90	38
91 - 96	39
97 - 102	40
103 - 109	41
110 - 116	42
117 - 124	43
125 - 132	44
133 - 141	45
142 - 151	46
152 - 163	47
164 - 175	48
176 - 189	49
190 - 205	50
206 - 222	51
223- 242	52
243 - 265	53
266 - 292	54
293 - 323	55
324 - 360	56
361 - 405	57
406 - 461	58
462 - 531	59
532 - 623	60
624 - 749	61
750 - 931	62
932 - 1,217	63
1,218 - 1,731	64
1,732 - 2,934	65
2,935 - 8,990	66
8,991 +	67

(2) In addition to the random samples of indemnity and denied claims and claims for which the Division received complaints or information indicating unpaid or late-paid compensation, the Audit Unit may select for audit any claims for which it received complaints or information over the past three years that indicate the possible existence of any claims handling violations.

§10107.1 (Audit) Effective May 1, 2003

(f) Following the conclusion of the audit, the Audit Unit shall issue a report of audit findings which may include, but is not limited to, the following: one or more requests for additional documentation or compliance, Notices of Intention to Issue Notice of Compensation Due, Preliminary Notices of Penalty Assessments, Notices of Compensation Due, or Notices of Penalty Assessments. If any additional requested documentation is not provided within thirty days of receipt of the report, additional audit penalties may be assessed under Section 10111.1(d)(2) of these Regulations.

(g) The audit subject shall pay all expenses of an audit of an adjusting location outside the State of California, including per diem, travel expense, and compensated overtime of audit personnel.

(h) The audit subject shall make each of the claim files selected for audit available at the audit site at the time of audit commencement. If claim files are maintained in an electronic or other non-paper storage medium, the claims administrator shall, upon request, provide to the Audit Unit direct computer access to electronic claim files and/or legible printed paper copies of the claim files, including all records of compensation payments. If a randomly selected indemnity, medical-only, or denied claim has been incorrectly classified as to type by the audit subject, the Audit Unit may randomly select an additional correctly designated claim file for audit, and may also assess penalties as appropriate in the misdesignated claim initially selected. If the audit subject fails to produce a claim selected for audit, the Audit Unit may assess a penalty for failure to produce the claim pursuant to Section 10111.2(b)(3) and may also select for audit another claim of the same type to complete the random sample. If the audit subject has transferred a claim selected for audit to a different adjusting location of the company being audited, the audit subject shall nonetheless produce the claim for audit within five working days of request, unless additional time is agreed upon by both the Audit Unit and the audit subject.

(i) The Audit Unit shall have discretion to audit claims in addition to those identified with the Notice of Audit Commencement. The audit subject shall make each of the additional claims selected for audit available at the audit site as follows:

(1) Open claims and closed claims stored on site within one working day of request;

(2) Closed claims stored off site within five working days of request, unless additional time is agreed upon by both the Audit Unit and the audit subject.

(j) The audit subject shall provide the auditor(s) an adequate, safe, and healthful workspace during the audit, which allows the auditors a reasonable degree of privacy. If this workspace is not provided, the Audit Unit may require the audit subject to deliver the files to the nearest Audit Unit office for completion of the audit.

(k) The Audit Unit may obtain and retain copies of documentation or information from claim files to support the assessment of penalties.

(l) The audit subject shall have the opportunity to discuss preliminary findings and provide additional information at a post-audit conference.

§10107.1 (Audit) Effective May 1, 2003

(m) The Audit Unit may at any time request additional information or documentation related to the claims being audited in order to complete its audit. Such information may include documentation that, as specified by Labor Code Sections 3751(a) and 3752, compensation has not been reduced or affected by any insurance, contribution, or other benefit due to or received by or from the employee. The audit subject shall provide any requested documentation or other information within thirty days from the Audit Unit's request, unless the Audit Unit extends the time for good cause.

Note: Authority cited: Sections 59, 129.5, 133, 5307.3, Labor Code.

Reference: Sections 11180, 11180.5, 11181, and 11182, Government Code. Sections 111, 124, 129, 129.5, 3751 and 3752, Labor Code.

§10111.2. Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule.

(a) For full compliance audits conducted on or after January 1, 2003, administrative penalties will be assessed pursuant to this subsection (a) for audit subjects that fail to meet or exceed the profile audit review performance standards calculated pursuant to Section 10107.1(c)(3) but meet or exceed the full compliance audit performance standards calculated pursuant to Section 10107.1(d)(3). However, for violations in claims with dates of injury from January 1, 1990 through December 31, 1993, penalty amounts may not exceed the amounts that would be assessed pursuant to Section 10111, and for violations in claims with dates of injury from January 1, 1994 through December 31, 2002, penalty amounts may not exceed the amounts that would be assessed pursuant to Section 10111.1:

(1) The penalty for each failure to pay the 10% self-imposed increase due because of a late indemnity payment, in accordance with Labor Code Section 4650(d) is:

If the self-imposed increase was not paid or was only partially paid, the audit penalty is based on the amount of the underlying indemnity and is as follows:

\$50 if the late-paid indemnity totals not more than 3 days;

\$100 if the late-paid indemnity totals more than 3 but not more than 7 days;

\$150 if the late-paid indemnity totals more than 7 but not more than 14 days;

\$200 if the late paid indemnity totals more than 14 but not more than 21 days;

\$300 if the late paid indemnity totals more than 21 but not more than 28 days;

\$500 if the late paid indemnity totals more than 28 days.

(2) The penalty for each failure to pay or denial of rehabilitation maintenance allowance, temporary disability indemnity, or salary continuation in lieu of temporary disability indemnity, without a factual, medical or legal basis for the failure or denial, is:

\$200 for the equivalent of 3 days or less of unpaid indemnity;

\$400 for the equivalent of more than 3 but not more than 7 days of unpaid indemnity;

\$600 for the equivalent of more than 7 but not more than 14 days of unpaid indemnity;

\$1,000 for the equivalent of more than 14 but not more than 21 days of unpaid indemnity;

§10111.2 (Audit) Effective May 1, 2003

\$1,500 for the equivalent of more than 21 but not more than 28 days of unpaid indemnity;

\$2,000 for the equivalent of more than 28 but not more than 35 days of unpaid indemnity;

\$3,000 for the equivalent of more than 35 but not more than 42 days of unpaid indemnity;

\$5,000 for the equivalent of more than 42 days of unpaid indemnity.

(3) The penalty for each failure to pay permanent disability indemnity based on a reasonable estimate of permanent disability, or denial of permanent disability indemnity, without a factual, medical or legal basis, is:

\$400 for up to 6 weeks of unpaid indemnity;

\$800 for more than 6 but not more than 15 weeks of unpaid indemnity;

\$1,500 for more than 15 but not more than 30 weeks of unpaid indemnity;

\$2,000 for more than 30 but not more than 50 weeks of unpaid indemnity;

\$3,000 for more than 50 but not more than 95 weeks of unpaid indemnity;

\$5,000 for more than 95 weeks of unpaid indemnity.

(4) The penalty for each failure to pay death benefits pursuant to Labor Code Section 4701 to any claimant without a factual, medical or legal basis for the failure, is:

\$200 for the equivalent of 3 days or less of unpaid indemnity or for no more than \$300 of unpaid burial expenses;

\$400 for the equivalent of more than 3 but not more than 7 days of unpaid indemnity or for more than \$300, but not more than \$600, of unpaid burial expenses;

\$600 for the equivalent of more than 7 but not more than 14 days of unpaid indemnity or for more than \$600, but no more than \$900, of unpaid burial expenses;

\$1,000 for the equivalent of more than 14 but not more than 21 days of unpaid indemnity or for more than \$900, but no more than \$1,500, of unpaid burial expenses;

§10111.2 (Audit) Effective May 1, 2003

\$1,500 for the equivalent of more than 21 but not more than 28 days of unpaid indemnity or for more than \$1,500, but no more than \$2,000, of unpaid burial expenses;

\$3,000 for the equivalent of more than 28 but not more than 42 days of unpaid indemnity or for more than \$2,250 of unpaid burial expenses;

\$5,000 for the equivalent of more than 42 days of unpaid indemnity.

The penalty for each failure to pay to any claimant compensation which was accrued and unpaid to the injured worker at the time of the worker's death is the same penalty which would apply for failure to pay that compensation to the injured worker.

(5) The penalty for each late first payment of temporary disability indemnity is:

\$100 if the first payment was made 1 to 3 days late

\$200 if the first payment was made 4 to 7 days late

\$250 if the first payment was made 8 to 14 days late;

\$300 if the first payment was made 15 to 21 days late;

\$400 if the first payment was made 22 to 30 days late.

Penalty amounts for payments made over 30 days late are assessed pursuant to Sections 10108(c) and subsection (a)(2) of this section.

(6) The penalty for each late first payment of permanent disability is:

\$100 if the first payment was made 1 to 3 days late;

\$200 if the first payment was made 4 to 7 days late

\$250 if the first payment was made 8 to 14 days late;

\$300 if the first payment was made 15 to 21 days late;

\$400 if the first payment was made 22 to 30 days late.

Penalty amounts for payments made over 30 days late are assessed pursuant to Sections 10108(c) and subsection (a)(3) of this section.

For purposes of this subsection, the first payment of permanent disability indemnity shall be considered late if not made within 14 days after the last payment of

§10111.2 (Audit) Effective May 1, 2003

temporary disability indemnity, or within 14 days of knowledge of the existence of permanent disability, whichever last occurs.

(7) The penalty for each late first payment of VRMA or death benefit is:

\$100 if the first payment was made 1 to 3 days late;

\$200 if the first payment was made 4 to 7 days late

\$250 if the first payment was made 8 to 14 days late;

\$300 if the first payment was made 15 to 21 days late;

\$400 if the first payment was made 22 to 30 days late.

Penalty amounts for payments made over 30 days late are assessed pursuant to Sections 10108(c) and subsection (a)(2) of this section.

(8) The penalty for each underpayment of an indemnity payment (including death benefits and VRMA), when the balance of the indemnity was paid late, including late paid self-imposed increases not paid together with the late temporary disability or permanent disability indemnity payment pursuant to Labor Code Section 4650(d), is:

\$100 for late payment of the equivalent of 3 days of indemnity or less;

\$200 for late payment of the equivalent of more than 3 but no more than 7 days of indemnity;

\$250 for late payment of the equivalent of more than 7 but no more than 14 days of indemnity;

\$300 for late payment of the equivalent of more than 14 but no more than 21 days of indemnity;

\$400 for late payment of the equivalent of more than 21 but no more than 30 days of indemnity;

Penalty amounts for underpayments made more than 30 days late are governed by Section 10108(c).

(9) Penalty amounts assessed pursuant to subsections (a)(1) through (a)(8) will be increased by 100% if the failure to pay or late payment was in violation of an award or order of the Workers' Compensation Appeals Board or an order of the Rehabilitation Unit.

§10111.2 (Audit) Effective May 1, 2003

(10) Notwithstanding Labor Code Section 129.5(c)(1) and whether or not the audit subject has met or exceeded performance standards calculated pursuant to Section 10107.1(c)(3), penalties will be assessed for failure to pay, or late or partial payment of, a Notice of Compensation Due issued as a result of an audit. Penalties will be assessed as follows:

A penalty in the same amount as the total of the penalties applicable under subsections (a)(1) through (a)(4) and (a)(9) will be assessed for any compensation paid more than 15 but not more than 30 days after receipt of the Notice of Compensation Due;

A penalty in the amount of 200% of the total of the penalties applicable under subsections (a)(1) through (a)(4) and (a)(9) will be assessed for any compensation paid more than 30 but not more than 60 days late;

A penalty in the amount of 300% of the total of the penalties applicable under subsections (a)(1) through (a)(4) and (a)(9) will be assessed for any compensation not paid within 60 days.

(11) Notwithstanding Labor Code Section 129.5(c)(2) and whether or not the audit subject has met or exceeded performance standards calculated pursuant to Section 10107.1(d)(3), additional penalties will be assessed for late payment or failure of the audit subject to pay any administrative penalties assessed pursuant to this section that are not timely appealed pursuant to Section 10115.1. Penalties will be assessed as follows:

An additional penalty of 50% of the amount of each late paid penalty will be assessed for each penalty paid more than 30 but not more than 60 days from receipt of the Notice of Penalty Assessments;

An additional penalty of 100% of the amount of each applicable penalty will be assessed for each penalty not paid within 60 days of receipt of the Notice of Penalty Assessments.

(b) For full compliance audits conducted on or after January 1, 2003, administrative penalties will be assessed pursuant to subsection (a) and this subsection (b) for audit subjects that fail to meet or exceed the full compliance audit performance standards calculated pursuant to Section 10107.1(d)(3). However, for violations in claims with dates of injury from January 1, 1990 through December 31, 1993, penalty amounts may not exceed the amounts that would be assessed pursuant to Section 10111, and for violations in claims with dates of injury from January 1, 1994 through December 31, 2002, penalty amounts may not exceed the amounts that would be assessed pursuant to Section 10111.1:

§10111.2 (Audit) Effective May 1, 2003

(1) The penalty for each failure to investigate a claim as provided by Section 10109 of these Regulations is:

\$500 if the failure to investigate involved a claim for medical treatment only, with no reasonable expectation of liability for indemnity payments, or if the failure to investigate involved the need for medical treatment or testing, but did not involve uncompensated lost time or permanent disability;

\$1,000 if the failure to investigate involved a claim for or reasonable expectation of liability for only one of the following classes of benefits: temporary disability; permanent disability indemnity; or, vocational rehabilitation;

\$2,500 if the failure to investigate involved a claim or reasonable expectation of liability for any combination two of the following classes of benefits: temporary disability; permanent disability indemnity; or, vocational rehabilitation;

\$5,000 if the failure to investigate involved a claim or reasonable expectation of liability for death benefits, or for all of the following classes of benefits: temporary disability; permanent disability indemnity; and, vocational rehabilitation.

(2) The penalty for each denial of all liability for a claim without documentation supporting a factual, medical, or legal basis for the denial is specified in this subsection.

In order to avoid a penalty, the denial must state a legal, factual or medical basis recognized by applicable law and documented by information in the claim file. An employee's waiver of benefits in an otherwise clearly compensable case is not a ground to deny liability.

The penalty is \$2,500 for a claim involving the potential for medical treatment only, with no potential for liability for indemnity payments;

The penalty is \$4,000 for a claim involving the potential liability for medical treatment and for only one of the following classes of benefits: temporary disability; permanent disability indemnity; or, vocational rehabilitation;

The penalty is \$4,500 for a claim involving the potential liability for medical treatment and for any combination of two of the following classes of benefits: temporary disability; permanent disability indemnity; or, vocational rehabilitation;

The penalty is \$5,000 for a claim involving the potential liability for death benefits, or for all of the following classes of benefits: medical treatment, temporary disability; permanent disability indemnity; and, vocational rehabilitation.

The penalty will be reduced by 20% for good faith if there was an incomplete investigation of the claim.

§10111.2 (Audit) Effective May 1, 2003

The total amount assessed for a denial shall be reduced by 50% if the claim was accepted after the denial without evidence that the acceptance was the result of litigation or of the claim's selection for audit.

(3) The penalty for each failure to produce a legible paper copy of a claim file as required by Section 10107 or at the time specified by the Administrative Director is:

\$100 if the file was produced not more than 3 days late;

\$250 if the file was produced more than 3 but not more than 14 days late;

\$500 if the file was produced more than 14 but not more than 29 days late;

\$1,000 if the file was produced more than 29 days late but not more than 40 days late;

\$2,500 if the file was produced more than 40 days late but not more than 90 days late;

\$5000 if the was produced more than 90 days late or was not produced.

(4) The penalty for providing a backdated or otherwise altered or fraudulent document to the Audit Unit, or intentionally withholding a document from the Audit Unit, which would have the effect of avoiding liability for the payment of compensation or an audit penalty is: \$5,000 for each backdated, altered, or withheld document.

(5) The penalty for each failure to object or pay to the injured worker, within 60 days of receiving a request, reimbursement for the reasonable expense incurred for self-procured medical treatment in accordance with Labor Code Section 4600, is:

\$100 for \$100 or less in expense;

\$200 for more than \$100, to \$500, in expense;

\$300 for more than \$500, to \$1,000, in expense;

\$500 for more than \$1,000 in expense.

(6) The penalty for each failure to pay reasonable expenses of transportation, meals, and lodging incident to reporting to an examination, together with one day of temporary disability indemnity for each day of wages lost when submitting to the

§10111.2 (Audit) Effective May 1, 2003

examination, when notifying the employee of a medical evaluation scheduled by the claims administrator in accordance with Labor Code Sections 4600 through 4621; or to pay these expenses within 14 days of receiving notice of a medical evaluation scheduled by the Administrative Director or the appeals board; or to object or pay the injured worker for any reasonable transportation expenses incurred to obtain medical treatment or evaluation, within 60 days of receiving a request, is:

\$100 for more than \$10, to \$100, in expense;

\$200 for more than \$100, to \$300, in expense;

\$300 for more than \$300, to \$500, in expense.

\$500 for more than \$500 in expense.

(7) The penalty for each failure to document a factual basis for paying less than the maximum indemnity rate is:

\$50 if the total indemnity, paid and unpaid, totals not more than 3 days;

\$100 if the total indemnity totals more than 3 but not more than 7 days;

\$150 if the total indemnity totals more than 7 but not more than 14 days;

\$200 if the total indemnity totals more than 14 but not more than 21 days;

\$300 if the total indemnity totals more than 21 but not more than 28 days;

\$500 if the total indemnity totals more than 28 days.

(8) The penalty for each failure to comply with any regulation of the Administrative Director specified in this subsection is:

[i] For each failure to include in a claim file a copy of the Employee's Claim for Worker's Compensation Benefits, DWC Form 1, showing the date the form was provided to and received from the employee, or documentation of the date the claim form was provided to the employee if the employee did not return the form, the penalty is:

\$100 if there was any late indemnity payments, or if notice of acceptance of the claim was not issued within 90 days after the employer's date of knowledge of injury and disability, or if the claim was denied.

[ii] For each failure to issue a notice of benefits as required by Title 8, California Code of Regulations, Division 4.5, Chapter 1, Article 8, beginning with Section 9810,

§10111.2 (Audit) Effective May 1, 2003

or by Title 8, California Code of Regulations, Division 4.5, Chapter 1.5, Article 7, beginning with Section 10122, unless penalties are assessed pursuant to subsections (b)(14) through (b)(20), the penalty is \$100.

[iii] For each Notice of Benefits that was not issued timely as provided in Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810, or as provided in Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1.5, Article 7, beginning with Section 10122, unless penalties are assessed pursuant to subsections (b)(14) through (b)(20), the penalty is:

\$25 for each notice of first, resumed, changed or final payment of temporary disability indemnity, wage continuation, death benefits, permanent disability indemnity, or VRMA that was issued from 1 to 7 days late;

\$50 for each notice of first, resumed, changed or final payment of temporary disability indemnity, wage continuation, death benefits, permanent disability indemnity, or VRMA that was issued more than 7 days late, and for each delay in decision notice which was issued from 1 to 7 days late;

\$75 for each delay in decision notice, that was, issued more than 7 days late.

[iv] For each notice of benefits required by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810, (except a materially misleading denial notice assessed under subsection (b)(21) or by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1.5, Article 7, beginning with Section 10122, that is materially inaccurate or incomplete, the penalty is \$25.

[v] For each failure to include in a claim file, or document attempts to obtain, any of the required contents specified in Section 10101.1(b), (c), (d), (e), (f), (g), (h), (i), (j) of these Regulations, the penalty is \$100.

[vi] For each failure to comply with any regulation of the Administrative Director, not otherwise assessed in this Subchapter, the penalty is \$100.

(9) The penalty for each failure to pay or object to a billing for a medical-legal expense, in the manner required by Section 9794, within 60 days of receiving the bill and all reports and documents required by the Administrative Director incident to the services, is:

\$100 for each bill that was paid more than 60 days from receipt with interest and a 10% increase;

\$200 for each bill that was paid more than 60 days from receipt where either interest or a 10% increase was not included;

§10111.2 (Audit) Effective May 1, 2003

\$300 for each bill that was paid more than 60 days from receipt where neither interest nor a 10% increase was paid.

\$500 for each bill that was not paid at the time the audit subject was notified the claim was selected for audit where no timely objection was sent.

(10) The penalty for each failure to pay or object, in the manner required by law or regulation, to a bill for medical treatment provided or authorized by the treating physician, is as follows when the bill remains unpaid at the time the audit subject is notified that the claim was selected for audit:

\$100 for each bill of \$100 or less, excluding interest and penalty;

\$200 for each bill of more than \$100, but no more than \$500 excluding interest and penalty;

\$300 for each bill of more than \$500, but no more than \$1,000, excluding interest and penalty;

\$500 for each bill of more than \$1,000, excluding interest and penalty.

(11) The penalty for each failure to pay or object, in the manner required by law or regulation, to a bill for medical treatment provided or authorized by the treating physician, is as follows when the bill was paid before the audit subject was notified that the claim was selected for audit:

\$100 for each bill that included a 10% increase and interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code Section 4603.2; \$200 for each bill that included either a 10% increase or interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code Section 4603.2; \$300 for each bill that included neither a 10% increase nor interest with the late payment of any uncontested amount of the bill, in accordance with Labor Code Section 4603.2.

(12) The penalty for each failure to pay or object to a vocational rehabilitation bill within 60 days of receipt, as required by Title 8, California Code of Regulations, Sections 10132 and 10132.1, is:

\$25 for each bill of \$100 or less;

\$50 for each bill of more than \$100, but no more than \$200;

\$75 for each bill of more than \$200, but no more than \$300;

\$100 for each bill of more than \$300.

(13) The penalty for each failure to maintain or provide to the Audit Unit a claim log that complies with these Regulations is:

\$25 for each failure to list on a claim log one or more of the following: employee's name; claim number; date of injury;

\$25 for each misdesignation of an indemnity claim as a medical-only claim on the claim log;

\$100 for each failure to identify self-insured employers on the log as required by Section 10103.1(b)(6) of these Regulations;

\$100 for each failure to identify the underwriting insurance company of an insurance group;

\$100 for each failure to designate a denied claim on the log;

\$100 for each claim not listed on the log;

\$250 for each failure to provide the claim log to the Audit Unit within 14 days of receipt of a written request if the claim log was provided more than 14 but no more than 30 days from receipt of the request;

\$500 for each failure for more than 30 days from receipt of a written request, to provide the claim log to the Audit Unit.

(14) The penalty for each failure to provide information regarding the Americans with Disabilities Act, the Fair Employment and Housing Act, and workers' compensation vocational rehabilitation as required by Labor Code Section 4636(a) immediately after 90 days of aggregate temporary disability indemnity is \$100 if the information was provided or the employee returned to his or her usual and customary occupation more than 10 but not more than 20 days after 90 days of aggregate total disability, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(15) The penalty for each failure to issue notice of medical eligibility for vocational rehabilitation services (if not previously issued) within 10 days after knowledge of a physician's opinion that the employee is medically eligible, or for failure to issue notice within 10 days after 366 days of aggregate total temporary disability, is \$100 if the notice was issued not more than 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more

§10111.2 (Audit) Effective May 1, 2003

than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit. Where the injured worker is represented by an attorney and documentation in the claim file indicates that the injured worker's attorney has received a copy of the physician's report indicating the employee is medically eligible for vocational rehabilitation, and if the knowledge is of a physician's opinion other than the injured worker's treating physician, a physician selected from a panel provided by the Industrial Medical Council, or an agreed medical examiner, the penalty shall be assessed at 20% of the amount otherwise assessed under this subsection and shall not exceed \$100.

(16) The penalty for each failure to provide the employee with a copy of the treating physician's final report together with notice of the procedure to contest the treating physician's determination, in accordance with Labor Code Section 4636(d), immediately upon receipt of that report, is \$100 for compliance more than 10 but not more than 20 days after receipt of the treating physician's final report, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit. However, if a separate penalty is assessed under subsection (b)(17) for the violation, no penalty will be assessed under this subsection. If the injured worker was notified of the procedure to contest the treating physician's determination, but no copy of the treating physician's final report was provided with the notice, the maximum penalty shall be \$100 under this subsection.

(17) The penalty for each failure to notify an injured employee of the reasons he or she is not entitled to any, or to any further, vocational rehabilitation services, and the procedure for contesting the determination of non-eligibility, as required by Sections 9813(a)(3) and 10131, is \$100 if notification was issued more than 10 but not more than 20 days after the determination, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(18) The penalty for each failure to notify an injured employee that his or her injury may have caused permanent disability and the procedures for evaluating the permanent disability, or of the employer's position that the injury has caused no permanent disability and the employee's remedies, in the manner provided by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810; is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the

§10111.2 (Audit) Effective May 1, 2003

notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(19) The penalty for each failure to notify a claimant of the denial of all death benefits claimed by that person (except a denial limited to all or any of: burial expense, benefits which were due to the injured worker before his or her death, or medical-legal expense), in the manner provided by Title 8, California Code of Regulations, Division 1, Chapter 4.5, Subchapter 1, Article 8, beginning with Section 9810, is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(20) The penalty for each failure to send a notice denying liability for all workers' compensation benefits, in accordance with Title 8, California Code of Regulations, Division 4.5, Chapter 1, Article 8, beginning with Section 9810, is \$100 if the notice was issued up to 10 days late, and an additional \$100 for each additional delay of not more than 10 days, to a maximum penalty of \$400 if the notice was issued more than 30 days late, and \$500 if the notice was overdue more than 40 days and was not issued at the time the audit subject was notified that the claim was selected for audit.

(21) The penalty for each notice denying liability for all workers' compensation benefits, which was materially misleading, is \$500.

The penalty for each materially incomplete denial notice is \$100.

(22) The penalty for each termination, interruption or deferral of vocational rehabilitation services other than as provided by Labor Code Sections 4637(b), 4644(b) is \$1,000.

(23) The penalty for each failure to comply with, show good cause for non-compliance with, or contest, within 30 days of receipt, any written request or order of the Administrative Director or Audit Unit which is not specified in subsections (a)(9) or (b)(14) of this section is:

\$500 if there was compliance in more than 30 but not more than 40 days from receipt of the request or order;

\$1,000 if there was compliance in more than 40 but not more than 60 days from receipt of the request or order;

§10111.2 (Audit) Effective May 1, 2003

\$2,500 if there was compliance in more than 60 but not more than 90 days of receipt of the request or order;

\$5,000 for failure to comply within 90 days of receipt of the request or order.

(24) The penalty for each failure by a claims administrator to provide a claim form within one working day of receipt of a request from an injured worker or the worker's agent is:

\$500 if the claim form was provided in more than 1 but not more than 5 working days from receipt of the request, if benefits were being provided to the employee at the time of the request;

\$1,000 if the claim form was not provided within 5 working days of receipt of the request, if benefits were being provided to the employee at the time of the request;

\$3,000 if the claim form was provided in more than 1 but not more than 5 working days from receipt of the request, if benefits were not being provided to the employee at the time of the request;

\$5,000 if the claim form was not provided within 5 working days of receipt of the request, if benefits were not being provided to the employee at the time of the request.

(25) The penalty for each failure to comply with Section 10104 of this Subchapter is:

\$100 for each period of 1 to 14 days' delay in filing the Annual Report of Inventory, to a maximum penalty of \$500 for each Annual Report of Inventory;

\$500 for each Annual Report of Inventory that overstates or understates the number of claims by 10% or more.

(c) Mitigation of penalty amounts pursuant to Labor Code Section 129.5(b)(1) through (b)(7) will be applied as follows:

(1) Mitigation for gravity of the violation is included within the penalty amounts set forth in subsections (a) and (b).

(2) Mitigation for good faith of the insurer, self-insured employer, or third-party administrator will be determined based on documentation of attempts to comply with requirements of the Labor Code and the Administrative Director's regulations, and will result in a reduction of 20% for each applicable violation.

§10111.2 (Audit) Effective May 1, 2003

- (3) Mitigation for frequency is considered as included within the numbers of penalties and their amounts established by this section and in conjunction with the frequency of violations that determines whether or not the audit subject meets or exceeds the profile audit review performance standards and/or full compliance audit performance standards pursuant to Sections 10107.1(c)(3) and (d)(3).
- (4) Mitigation for history shall be determined as follows:
 - (A) For audits that meet or exceed the full compliance audit performance standard, penalty amounts will be reduced by 20%, after modification for good faith, if any, in instances in which the audit subject met or exceeded the profile audit review performance standards in the audit preceding the current audit. No reduction shall apply if the preceding audit occurred before January 1, 2003.
 - (B) For audits that fail to meet or exceed the full compliance audit performance standards, mitigation for history shall be determined pursuant to Labor Code Section 129.5(e).
- (5) Mitigation based on whether or not the audit subject has met or exceeded the profile audit review performance standard is determined pursuant to Labor Code Section 129.5(c) (1) and (c)(2).
- (6) Mitigation based on whether or not the audit subject has met or exceeded the full compliance audit performance standard is determined pursuant to Labor Code Section 129.5(c)(3).
- (7) Consideration of penalty amounts based on the size of the audit subject location pursuant to Labor Code Section 129.5(c)(3) shall be based on the number of indemnity claims reported at the audit subject's location for the last audited year. For audit subjects that fail to meet or exceed the full compliance audit performance standards calculated pursuant to Section 10107.1(d)(3), after penalty amounts are calculated pursuant to subsections (a)(1) through (c)(6) of this section, penalty amounts will be modified based on the size of the adjusting location as follows:

Number of indemnity claims reported at the audit subject location in last audited year:	Multiply the penalty amount calculated pursuant to subsections (a)(1) through (c)(6) of this section by the following factor:
Less than 65:	1.0
65-99	1.2
100-249	1.4
250-499	1.6
500-749	1.8
750-999	2.0

§10111.2 (Audit) Effective May 1, 2003

1,000-1,499	2.4
1,500-1,999	2.8
2,000-3,499	3.6
3,500 or more	7.2

(8) The Audit Unit may assess penalties pursuant to subsections (a), (b), and (c) in target audits in which the claims were audited to evaluate specific practices but in which full compliance audit samples of claims were not randomly selected pursuant to Section 10107.1(c) through (e).

Note: Authority cited: Sections 59, 129, 129.5, 133, 138.3, 138.4, 139.5, 4603.5, 4627 and 5307.3, Labor Code. Reference: Sections 124, 129, 129.5, 4061, 4453, 4454, 4550, 4600, 4603.2, 4621, 4622, 4625, 4636 through 4638, 4639, 4641, 4642, 4650, 4951, 4701 through 4703.5, 4706, 4706.5 5401, 5401.6, 5402, 5800 and 5814, Labor Code and Section 2629.1(e), (f), Unemployment Insurance Code.