

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6910 HOUSE JUDICIARY

154

HB

30

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 21, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-8-91

The JUDICIARY Committee considered:

HB 30

HOUSE BILL NO. 30

SENTENCING; REHABILITATION; PAROLE

"An Act relating to sentencing practices and procedures and to the serving of sentences; expanding the circumstances in which a sentence may require participation in an appropriate rehabilitation or treatment program; redefining eligibility for discretionary parole; adding a related mitigating factor in the determination of presumptive sentences; authorizing the Department of Corrections to establish alternative sentencing and related programs for prisoners; and providing for an effective date."

RECOMMENDATIONS:

be replaced with

CS HB 30 (Jud)

[] the same title

[X] a new title

[] have attached amendments(s)

[X] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

1 [X] zero fiscal note Leg. Affairs

[] zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Signature	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>Dave Douley</i>				
<i>Mark Shenberg</i>				
<i>Mark Ranley</i>			X	
<i>Terry Martin</i>		X		
<i>Mikel Miller</i>			X	
<i>Kevin Pad Parnell</i>				
<i>J. Ellis</i>				

Dave Douley
Chairman's Signature

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 8, 1991

SUBJECT: Germaneness (CSHB 30(JUD))

TO: Representative Dave Donley

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is a draft CS to HB 30 that you requested. The original bill dealt with sentencing practices, but the CS now deals with an entirely new subject, the Exxon settlement. Since a CS is actually an amendment to a bill proposed by committee, this CS appears to violate the germaneness requirement. Rule 35 of the Uniform Rules of the Alaska State Legislature provides in relevant part:

No motion or proposition on a subject shall be admitted under color of amendment if the subject matter is different from that under consideration.

...

This is supplemented by Mason's Manual of Legislative Procedure which provides in Sec. 402:

Sec. 402. Amendments Must Be Germane

1. Every amendment proposed must be germane to the subject of the proposition or to the section or paragraph to be amended, and an amendment is not in order which is not germane to the question to be amended. This is, basically, a phrase of the rule that each proposition have but one subject and that members have the right to vote separately on each question.

2. To determine whether an amendment is germane, the question to be answered is whether the question is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal.

3. To be germane, the amendment is required only to relate to the same subject. It may entirely change the effect of the motion or measure and still be germane to the subject.
4. An entirely new proposal may be substituted by amendment so long as it is germane to the main purpose of the original proposal.
5. An amendment to an amendment must be germane to the subject of the amendment as well as to the main question.
6. No independent new question can be introduced under cover of an amendment. But an amendment may be in conflict with the spirit of the original motion, and still be germane and, therefore, in order.
7. The admissibility of an amendment should be judged from the provisions of the text, rather than from the purpose which circumstances may suggest.
8. Whether a proposed amendment is consistent with the measure, motion or question proposed to be amended, is a question to be decided by the body and not by the presiding officer.

The question of whether an amendment is germane is a parliamentary procedure question which must be raised by a member of the body or the point is waived. As stated in Rule 402(8) of Mason's Manual, if the question is raised it is a question to be decided by the body.

However, the question of germaneness is not just a matter of interpretation by the body, for there is a constitutional aspect. It has been held by the Court of Appeals in Alaska and by courts in other jurisdictions that an amendment to a bill that entirely changes its subject triggers the three reading requirement. That is to say, any reading given the bill prior to adoption of the amendment no longer counts. (Smith v. Michell, 72 SE 755 (West Virginia 1911); Van Brunt v. State, 653 P.2d 343 (Alaska 1982); Casey v. Southern Baptist Hospital, 526 S.2d 1332 (Louisiana 1988)).

TBC:pl
91-138.plm

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. CSHB 30(JUD)

Revision Date: _____ Department Affected: Legislative Affairs Agency
 Title: Settlement Negotiations on the BRU: _____
Exxon Valdez oil spill claims Component: _____
 Sponsor: House Judiciary Committee
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: House Judiciary Committee Phone: 465-4990
 Division: Alaska State Legislature Date: March 8, 1991
 Approved by Commissioner: Chairman Dave Donley *Dave Donley*
 Agency: House Judiciary Committee Date: 3/8/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HPB

33

(7)

F. USE COMMITTEE REPORT

Date Referred: February 22, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-14-91

The JUDICIARY Committee considered:

SSHB 33

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33 PENALTIES FOR VIOLATION OF OSHA LAWS

"An Act relating to penalties for violation of workplace safety laws; and assessing costs for an employer's failure to appear at certain hearings of the OSHA Review Board."

RECOMMENDATIONS:

be replaced with _____

CS^S HB 33 (Jun)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Labor

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>David Douley</u>		<u>Terry Martin</u>	✓		
<u>J. S. Sells</u>					
<u>Mark Stuenkel</u>	-	<u>Mark Stuenkel</u>		X	
		<u>Kevin Pad Palneo</u>		✓	

David Douley

CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

2-22-91

(7)
Date Referred: February 12, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2-21-91

The LABOR AND COMMERCE Committee considered:

SSHB 33

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33 PENALTIES FOR VIOLATION OF OSHA LAWS

"An Act relating to penalties for violation of workplace safety laws; and assessing costs for an employer's failure to appear at certain hearings of the OSHA Review Board."

RECOMMENDATIONS:

be replaced with CESS HB 33 (L+C) the same title
[] a new title

[] have attached amendments(s)

do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Dept. of Labor


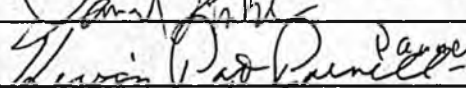
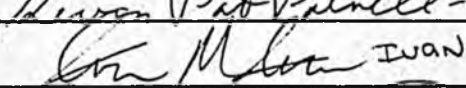
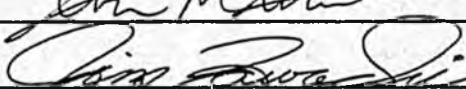
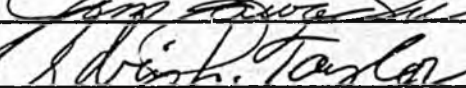
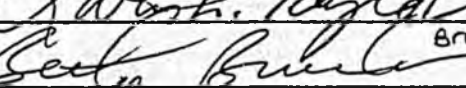
[] fiscal note(s) _____

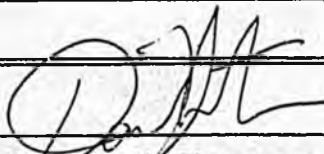
[] zero fiscal note _____

[] zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
 FINKELSTEIN				
 PADGETT				
 IVAN				
 ZAWACKI	Zawacki		X	
 TAYLOR	TAYLOR		X	
 BRUCHMAN				

 FINKELSTEIN
Chairman's Signature

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO : CSSSHB 33(Jud)

Revision Date: _____
 Title: "An Act relating to penalties for
 violation of workplace safety laws;..."
 Sponsor: Representative Koponen
 Requestor: House Judiciary

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: _____
 Occupational Safety & Health
 COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	10.0	10.0				
CONTRACTUAL	20.0	20.0				
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	30.0	30.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE	215.0	86.0	34.0	14.0	6.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	30.0	30.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	30.0	30.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

see attached

Prepared by: Robert Libbey, Director Phone: 264-2452
 Division: Labor Standards & Safety Date: 3/12/91

Approved by Commissioner: Nancy Bear Usura
 Agency: Department of Labor Date: 3/12/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis for:

"An Act relating to penalties for violation of workplace safety laws..."

This bill would increase the amount of the penalties charged for the violation of workplace safety laws. Because of the increase in penalties, we expect an increase in the number of contested violations and in the number of requests for informal conferences. This increased workload would result in additional travel for existing staff as well as the OSHA Review Board members. Additional legal support for the review board would also be required.

Expenditures

Travel	\$10.0
OSH Review Board (5.0)	
Existing Staff (5.0)	
Contractual	\$20.0
Legal support for Review Board (15.0)	
Legal support for department (5.0)	
<u>Total Cost</u>	<u>\$30.0</u>

These costs should decrease after the first two years if the bill achieves its goal of providing more incentive for employers to voluntarily correct hazards so that we find fewer serious violations. Therefore we should have no additional costs beyond 1993.

Revenues

The department assessed a total of \$300,600 in penalties in FY 90 with a collection rate of approximately 70%. We estimate about \$300,000 in additional penalties would be assessed in FY 92 with the new rates. Assuming our 70% collection rate, revenues would increase by \$210,000.

After the first year, we anticipate revenues would decrease as employers voluntarily correct hazards and fewer violations are detected. Thus, after five years with the new penalties we project the deterrent affect of the higher rates would bring revenues back to what they currently are.

The bill would also permit the collection of expenses incurred when employers fail to appear at an OSH Review Board Hearing. The average daily cost for the OSH Review Board to hold hearings is \$1,000. If it must cancel five days of hearings because employers do not appear at hearings, the Board could ask for \$5,000 in reimbursable expenses from employers. Once employers understand that they may be liable for such costs, the number of cancellations should decrease and therefore, it is expected after the second year, no significant revenue will be raised under this provision.

Assumption: Effective date of July 1, 1991.

DEPARTMENT OF LAW

Proposed Amendment to the work draft of CS for HB 33
March 4, 1991

Page 3, lines 1 - 6, following "conviction," replace remainder of section with:

is guilty of a class A misdemeanor [PUNISHABLE BY A FINE OF NOT MORE THAN \$10,000, OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH. HOWEVER, UPON A SECOND CONVICTION AFTER A PRIOR CONVICTION FOR A VIOLATION CAUSING DEATH, AN EMPLOYER IS PUNISHABLE BY A FINE OF NOT MORE THAN \$20,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]. Nothing in this subsection precludes a prosecution brought under title 11.

DEPARTMENT OF LAW

Proposed Amendment to the work draft of CS for HB 33
March 4, 1991

Page 3, lines 1 - 6, following "conviction," replace remainder of section with:

is guilty of a class A misdemeanor punishable as authorized in AS 12.55 except that, if the defendant is an individual, [BY] a fine may be imposed not to exceed \$70,000 for a first offense and not to exceed \$140,000 for a subsequent offense [OF NOT MORE THAN \$10,000, OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH. HOWEVER, UPON A SECOND CONVICTION] after a prior conviction for a violation causing death[, AN EMPLOYER IS PUNISHABLE BY A FINE OF NOT MORE THAN \$20,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]. Nothing in this subsection precludes a prosecution brought under title 11.

any of the six paragraphs of subsection (g) are met. *State v. Andrews*, 723 P.2d 85 (Alaska 1986).

Where defendant's various check forgery cases violated similar societal interests, he could therefore receive concurrent sentences. *Winfrey v. State*, 683 P.2d 284 (Alaska Ct. App. 1984).

Correction of judgment unlawfully imposing concurrent sentences. — See

Joseph v. State, 712 P.2d 904 (Alaska Ct. App. 1986).

Sentence was remanded for consideration of alternatives to correct the illegality of concurrent sentences without increasing the total time to serve, where the trial court had erred in imposing a one-year sentence on a probation revocation concurrently to the other sentences. *Napayonak v. State*, Ct. App. Op. No. 1041 (File No. A-2672), P.2d (1990).

Sec. 12.55.030. Discharge of indigents imprisoned for nonpayment of fine. [Repealed, § 16 ch 53 SLA 1973.]

Sec. 12.55.035. Fines. (a) Upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose. No defendant may be imprisoned solely because of inability to pay a fine.

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) \$50,000 for a class A, B, or C felony;

(3) \$5,000 for a class A misdemeanor;

(4) \$1,000 for a class B misdemeanor;

(5) \$300 for a violation.

(c) Upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) \$500,000 for a felony offense or for a misdemeanor offense that results in death;

(B) \$200,000 for a class A misdemeanor offense that does not result in death;

(C) \$25,000 for a class B misdemeanor offense that does not result in death;

(D) \$10,000 for a violation;

(2) two times the pecuniary gain realized by the defendant as a result of the offense; or

(3) two times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

§ 12.55.035

§ 12.55.040

CODE OF CRIMINAL PROCEDURE

§ 12.55.045

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine. (§ 12 ch 166 SLA 1978; am § 17 ch 45 SLA 1982; am § 26 ch 143 SLA 1982; am § 4 ch 59 SLA 1988; am § 18 ch 85 SLA 1988; am §§ 1, 2 ch 142 SLA 1990)

Cross references. — For classification of offenses, see AS 11.81.250; for sentences of imprisonment for felonies, see AS 12.55.125; for sentences of imprisonment for misdemeanors, see AS 12.55.135.

Effect of amendments. — The first 1988 amendment inserted "attempted

murder in the first degree" in subsection (b)(1).

The second 1988 amendment inserted "sexual abuse of a minor in the first degree" in subsection (b)(1).

The 1990 amendment rewrote subsection (c) and added subsection (e).

NOTES TO DECISIONS

Court is under duty to consider defendant's earning capacity in connection with any imposition of a fine or restitution. Failure to do so requires automatic reversal and remand. Ashton v. State, 737 P.2d 1365 (Alaska Ct. App. 1987). Applied in Wright v. State, 651 P.2d

846 (Alaska Ct. App. 1982); Wilson v. State, 756 P.2d 307 (Alaska Ct. App. 1988).

Cited in Mancerson v. State, 655 P.2d 1320 (Alaska Ct. App. 1983); Constantine v. State, 739 P.2d 188 (Alaska Ct. App. 1987).

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim, to a public, private, or private nonprofit organization that has provided counseling, medical, or shelter services to the victim, or as otherwise authorized by law. A defendant is presumed to have the ability to pay restitution unless the defendant establishes the inability to pay by a preponderance of the evidence. In determining the amount and method of payment of restitution, the court shall take into account the

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

February 7, 1991

The Honorable Niilo Koponen
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Koponen:

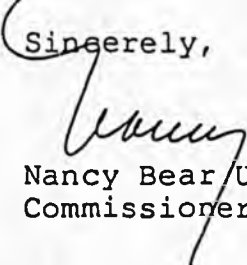
This is to follow up on our conversation concerning amendments to House Bill No. 33 to align Alaska's occupational safety and health penalty structure with that mandated by the U.S. Department of Labor.

Briefly, in 1990 Congress passed legislation requiring the federal Occupational Safety and Health Administration to increase penalties for OSHA violations. As you know, under our State occupational safety and health plan, Alaska is required to prescribe standards and enforcement of standards which are at least as effective as those provided by federal OSHA.

Consequently, it would seem prudent to go ahead and bring the penalties in your bill in line with the federal standard now, as opposed to having to make a two-step approach. To that end, enclosed is a listing of the specific amendments needed, along with some background information on the federal requirements.

Thank you for your help; and if you have any questions or need additional information; please let me know.

Sincerely,


Nancy Bear Usera
Commissioner

NBU:kh

Enclosure

Tor
14/11

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



JAN 23 1991

MEMORANDUM FOR: STATE DESIGNEES

FROM: GERARD F. SCANNELL
Assistant Secretary

SUBJECT: Statutory Increase in Penalty Levels

A handwritten signature in cursive script, reading "G. Scannell", is written over the typed name and title of the sender.

As you are aware, the Omnibus Budget Reconciliation Act of 1990, that was effective on November 5, amended section 17 of the Occupational Safety and Health Act to provide for increased penalty levels for violations of the Act. The excerpt of the Conference Report on the Budget Act which discusses penalties was sent to you on October 31. The amendments provide for a maximum of \$70,000 for willful and repeat violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, other than serious, failure to abate, and posting violations.

The Congress (as evidenced by the Conference Report) believes that the increased maximum penalty authority will serve as an important deterrent and will encourage employers to comply with safety and health regulations before they are inspected. Employers should realize that maintaining a safe and healthful workplace is less costly than facing the potential of high penalties, in addition to the major cost of accidents and injuries.

Since the \$5,000 floor for willful penalties is within currently authorized limits, in the interest of national consistency, the States are encouraged to implement it administratively, concurrently with Federal OSHA's implementation. (The Conference Report makes clear that negotiated settlement of willful violations may result in a lower penalty.) OSHA has developed procedures for implementing the new penalty calculations, in consultation with State plan representatives, and will begin proposing penalties at the new levels on all inspections beginning on or after March 1, 1991 for violations which occurred on or after November 5, 1990. (A copy of the final directive is attached, for your information.)

As you are aware, State plan approval criteria in section 18 of the Act and 29 CFR 1902 require the States to provide for standards and enforcement of standards which are at least as effective as OSHA's standards and enforcement. Further, OSHA regulations at 29 CFR 1953.20 and 1953.23 provide that when there is a change in the Federal program (examples given include

revisions in enforcement policies or procedures, and legislative or regulatory changes) the States are required to implement corresponding changes within six months of the Federal change. The time limit may be extended if the Assistant Secretary determines that a State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

We recognize that this is a significant change in the OSHA program for both the Federal and State programs; and that State legislative action is necessary to effect a comparable change. States, in order to be considered at least as effective as the Federal program, must have statutory penalty authority for their private sector programs that at least reflects the new Federal maximums. We urge all States to try to effect this statutory change within the required six months and are available to provide any assistance you may need. However, we also recognize that because of differing State legislative schedules, etc., some States may be unable to accomplish such a change within six months. OSHA will work with each State on an individual basis to effect the required increases as soon as practicable. You also should be aware that State implementation of the new penalty authority, once enacted, need not be identical to Federal procedures, though State performance will be evaluated by OSHA to assure equivalent effectiveness.

Please notify your respective Regional Administrator as soon as possible, if you foresee any problems in accomplishing this legislative change.

Attachment

cc: Regional Administrators

Department of Labor
Proposed Amendments to House Bill 33

1. Amend line 13 on page 1 to read:

than \$70,000 [\$10,000] for each violation. A minimum penalty of \$5,000 must be assessed under this section.

2. Page 2, line 4:

Change \$3,000 to \$7,000

3. Page 2, line 13:

Change \$3,000 to \$7,000

4. Page 2, line 18:

Change \$3,000 to \$7,000

5. Page 2, line 24:

Change \$30,000 to \$70,000

6. Page 2, line 26:

Change \$60,000 to \$140,000

7. Page 2, line 31:

Change \$30,000 to \$70,000

8. Page 3, line 4:

Change \$3,000 to \$7,000

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

S WALTER J. HICKEE, GOVERNOR

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

March 12, 1991

Honorable Dave Donley, Chairman
Judiciary Committee
House of Representatives
P. O. Box V
Juneau, Alaska 99801

Dear Representative Donley:

Apparently there has been some confusion over HB 33, to increase occupational safety and health penalties, with regard to which provisions are necessary to adopt in order to bring Alaska into parity with the federal Occupational Safety and Health Act, and which are discretionary. There are three issues contained in the bill. These follow:

1. The penalty increases set out in Sections 3, 4, 5, 6 and 9 of the draft Judiciary committee substitute correspond to the federal increases and need to be adopted to insure State compliance with federal statutes.
2. The increases proposed in Section 2, 7 and 8, are not mandated. They relate to criminal penalties which were not increased at the federal level. Alaska has never had a criminal conviction under its occupational safety and health statutes. For this reason, we do not feel strongly whether or not the criminal penalties are increased at this time.
3. Section 1 of the bill was requested by the department on behalf of the Occupational Safety and Health Review Board which hears appeals of violations and penalties. A hearing before the Board is scheduled at an employer's specific request. Accordingly, it is appropriate and reasonable for the employer to appear at such a hearing.

To further compound the issue, on March 1, 1991, the federal Occupational Safety and Health Administration issued a change in their methodology for adjusting penalties. This change came subsequent to the bill's introduction, and may have some implications which need to be clarified.

March 12, 1991

the new procedures indicates that although the penalty for occupational safety and health violations has even fold, the administrative procedures OSHA started March 1, 1991 will not result in a seven fold increase in actual penalties that will be assessed.

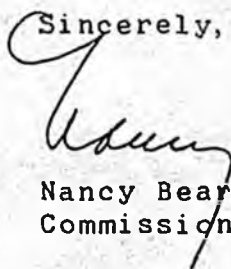
OSHA's new procedures will first provide an adjustment of from 30 to 70 percent based on the severity of the injury that could occur and the probability of that injury occurring. It would then allow up to an additional 95 percent reduction for size of employer, the good faith the employer shows in correcting the violation and for previous inspection history. The current penalty adjustment methodology used by the State does not provide for any adjustment based on severity and probability and only provides for an 80 percent reduction for the items listed above.

Attached are comparisons of the method currently used by the State and the method which federal OSHA started using on March 1, 1991 based on actual violations and penalties.

Inasmuch as the Department will be tailoring its penalty adjustment procedures after those of federal OSHA, we will be revising our fiscal note to decrease our original revenue projections, which were based on a seven-fold increase in penalties assessed. The revised fiscal note will also reflect a decrease in our proposed operating expenditures since, under the revised penalty methodology, we would not expect an increase in contest activity to the extent originally projected.

Thank you, and if additional information or clarification is needed, please let me know.

Sincerely,


Nancy Bear Usera
Commissioner

Enclosure

cc: Honorable Niilo Koponen

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

March 12, 1991

A review of the new procedures indicates that although the maximum penalty for occupational safety and health violations has increased seven fold, the administrative procedures OSHA started using on March 1, 1991 will not result in a seven fold increase in the actual penalties that will be assessed.


OSHA's new procedures will first provide an adjustment of from 30 to 70 percent based on the severity of the injury that could occur and the probability of that injury occurring. It would then allow up to an additional 95 percent reduction for size of employer, the good faith the employer shows in correcting the violation and for previous inspection history. The current penalty adjustment methodology used by the State does not provide for any adjustment based on severity and probability and only provides for an 80 percent reduction for the items listed above.

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Sincerely,



Nancy Bear Usera
Commissioner

Enclosure

cc: Honorable Niilo Koponen

A COMPARISON OF CURRENT PENALTY ADJUSTMENT PROCEDURES
AND THOSE THAT ARE BEING USED BY
FEDERAL OSHA AFTER THE INCREASE IN MAXIMUM PENALTY AMOUNTS

This comparison is based on actual State OSH cases:

Case # 1:

Violation description: Guardrail was not installed on scaffolding that was approximately 18 feet above the ground. This is a violation of paragraph 05.120 (b)(1)(D) of the Construction Safety Code and is classified as a serious violation.

Employer background: This employer is a construction contractor who employs seven employees. All seven employees use the scaffold on a daily basis. When the violation was brought to the employer's attention, he corrected the hazard immediately. The employer had not been previously inspected by the Occupational Safety and Health Section.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum penalty for serious violations is reduced by 40 percent because the employer employs fewer than 10 employees; by another 30 percent for good faith as the employer immediately corrected the violation; and by another 10 percent because the employer did not have a previous record of occupational safety and health violations. The final assessed penalty is therefore \$200.

Federal OSHA Penalty Procedure (the one that will be adopted by the State if HB 33 becomes law.):

* The compliance officer must first make a determination as to the severity of the injury that is likely to occur and the probability of the accident occurring. In the above case the severity of the injury is high because a fall of 18 feet can result in death or a permanent disability injury and the probability of the accident occurring is also high because seven employees use the scaffold daily for several hours. Under the OSHA procedure, the \$7,000 maximum penalty would first be reduced to \$5,000 base on the high severity/probability determination. The \$5,000 would then be adjusted 60 percent for size of employer (less than 25 employees), 25 percent for good faith (immediate correction of hazard) and 10 percent for history (no previous serious violations). This would result in a reduction of 95 percent and the final assessed penalty would be \$250.

Case # 2:

Violation description: Heavy engine and automobile parts are stored and stacked in an unstable manner. This is a violation of paragraph 01.0701(b) of the General Safety Code and is classified as a serious violation.

Employer background: This employer is a corporation that employs 609 employees. The engine and automobile parts are stored in a warehouse that is used by five employees. When the hazard was brought to the attention of the employer, he showed reluctance in correcting the violation. This employer has been inspected in the past and each inspection revealed several serious violations.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum for serious violation is reduced by 20 percent for good faith as the employer was reluctant to correct the hazard but indicated that he would do so. No reduction is provided for size as the employer employs over 100 employees and no reduction is provided for history because previous inspections revealed other serious violations. The \$1,000 penalty is reduced 20 percent and a penalty of \$800 is assessed.

Federal OSHA Penalty Procedure:

* The violation is of medium severity as the injury, a blow to the body or head from a falling part, may result in hospitalization but the injury would result in only a limited period of disability. The probability of the injury is low because only one of the five employees in the warehouse is required to enter the area where the automobile parts are stored for approximately half hour a day. Under the federal OSHA procedure the \$7,000 maximum penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be reduced by 15 percent for good faith. No reduction would be provided for size as the employer employs more than 250 employees and no reduction for history would be provided because previous inspections revealed serious violations. The final assessed penalty would therefore be \$ 1,700.

Case # 3:

Violation description: The dead front was missing from the main circuit breaker panel located in the process area of a fish processing plant. This is a violation of paragraph 03.200(g)(2)(A), Electric Safety Code.

Employer background: This employer operates a seafood processing plant employing 20 employees. The employer was cited for the same violation during an inspection conducted two years ago. This is, therefore a repeat violation.

Current Penalty Adjustment Procedure:

* The \$1,000 maximum penalty for serious violation is multiple by two because it is a repeat violation. The \$2,000 is then reduced by 30 percent for size of employer. No reduction is given for good faith or history because this is a repeat violation. The final assessed penalty is therefore \$ 1,400.

Federal OSHA Penalty Procedure:

* A determination of the severity of the injury and the probability that the accident would occur for this serious violation would first be made. The severity is medium as the injury, an electric shock, may result in hospitalization but the injury would only result in a limited period of disability. The probability is low as only one employee, the maintenance foreman, may be required to go near the circuit breaker. Under federal OSHA's procedure the \$7,000 maximum penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be multiplied by 2 for the repeat violation for a \$4,000 penalty. It would then be reduced by 40 percent for the size of the employer. No reduction would be given for good faith or history because of the repeat violation. The final assessed penalty would, therefore, be \$ 2,400.

Case # 4:

Violation description: A automobile body repair shop is inspected and is cited for improper storage of combustible substances per paragraph 01.1002 (d)(2)(G). This violation is classified as other-than-serious. When the employer fails to notify the Department that he has corrected the violation, a follow-up inspection is conducted and it is discovered that the employer failed to correct the violation. The department cites the employer for a "Failure to Abate" violation.

Employer background: This automobile body repair shop employer employs five employees.

Current Penalty Adjustment Procedure:

* As there was no penalty assessed for this violation when it was first cited, the department starts with a \$100 base. This base is multiplied by 10 as the employer allowed this hazard to go uncorrected for over 10 days (the maximum number of times the statute allows the department to multiple a failure to abate penalty is 10 days). The \$1,000 penalty is then reduced by 40 percent for size of the employer for a final assessed penalty of \$600.

Federal OSHA Penalty Procedure:

* OSHA starts with a penalty of \$1,000 when no penalty was originally assessed. This penalty is then multiplied by 10 (see reason for a unadjusted penalty of \$10,000. This amount will then be reduced by 60 percent for size of the employer for a final assessed penalty of \$ 4,000.

Case # 5:

Violation description: An employee is killed in an industrial accident at a laundry. The department's investigation reveals that the death was caused when an employee reached into a commercial washer during the spin cycle and was torn to death when the machine failed to stop. This is a violation of paragraph 11.110(f)(2)(A)(i) of the Laundry Safety Code which requires all commercial washing machines to have an automatic stopping device when they are opened when they are operating. The investigation reveals that the employer was well aware of this requirement and was warned by several employees that this was a dangerous hazard. The department, based on this information, determined that this was a willful violation.

Employer background: This employer operates a chain of laundry and dry cleaning establishments and employs 50 employees throughout the State.

Current Penalty Adjustment Procedure:

* The \$10,000 maximum penalty for willful violation is not adjusted as it is the department's current methodology does not reduce penalties for violations that can be determined to have caused a serious disability injury or death to an employee. The final assessed penalty is \$10,000.

Federal OSHA Penalty Procedure:

* A determination will be made as to the severity of the injury and the probability of the injury occurring. In the above case the severity would be consider high and the probability high because five employees were required to use the defective machine several times during the day. Under OSHA procedures, the starting penalty would be \$5,000 for the violation. This base would be multiplied by seven because it is a willful violation. The \$35,000 unadjusted penalty would be adjusted 40 percent for size. No reduction will be provided for good faith because the violation is classified as willful. A 10 percent adjustment for history would be given because this was the first inspection conducted at this employer's work site. The \$35,000 penalty would therefore be reduced by 50 percent for a final assessed penalty of \$ 17,500.


Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

House District 21

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172

M E M O R A N D U M

To: Representative Dave Donley
From: Representative Niilo Koponen 
Re: CSSSHB 33 "An Act relating to workplace safety laws"
Date: February 25, 1991

I would appreciate the Judiciary Committee Scheduling House Bill 33 at your earliest convenience.

If you have any questions please feel free to give me a call or my aide, Shari Paul at 4992.

Thank you.

FATALITY RATES 1983 - 1989

	United States	Alaska
1983	5.6	15.3
1984	6.4	14.7
1985	6.2	16.1
1986	5.9	14.8
1987	5.4	29.0
1988	4.4	15.4
1989	-	8.3

ILLNESS RATES USING A BASE OF 10,000 WORKERS

	United States	Alaska
1984	18.4	21.4
1985	18.0	28.7
1986	19.2	23.2
1987	26.4	38.6
1988	32.2	31.2
1989	-	53.7

Comparison of Alaska and US Injury/Illness Rate by Industry.

	Ak US 1985	% Above US	Ak US 1986	% Above US	Ak US 1987	% Above US	Ak US 1988	% Above US	Ak US 1989	% Above US
Oil & Gas Extraction	9.7 10.1	-4	8.2 8.1	1	9.0 8.3	8	8.6 8.3	4	9.5 7.6	25
Construction	19.4 15.2	28	16.2 15.2	7	17.1 14.7	16	13.6 14.6	-7	17.6 14.3	23
Seafood Proc - Canned	30.3 -		34.3 19.1	13	35.2 26.4	33	37.5 23.8	58	39.3 25.9	52
Seafood Proc - Frozen	33.9 19.2	77	33.0 18.2	51	35.3 18.8	68	27.1 19.7	36	33.2 24.3	37
Lumber & Wood Product	38.6 18.5	109	50.9 18.9	169	48.5 18.9	157	50.3 19.5	158	41.1 18.4	123
Transport. & Utility	11.3 2.6	31	11.3 8.2	38	10.9 8.4	30	10.1 8.9	13	15.8 9.2	72
Wholesale Trade	10.9 7.2	51	6.0 7.2	11	9.4 7.4	27	10.7 7.6	41	10.3 7.7	34
Retail Trade	9.8 7.5	31	9.2 7.8	18	9.3 7.8	19	10.1 7.9	28	10.7 8.1	32
Services	5.5 5.4	2	5.4 5.3	2	6.5 5.5	18	6.0 5.4	11	5.9 5.5	7

**Alaska State Legislature
Representative Niilo Koponen**

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***POSITION PAPER*
HB 33**

Both Minor and Gross violations of Alaska's Occupational Safety and Health Statutes remained at the same \$10,000 or lower level since passage of the original legislation in 1973.

In November of 1990 Congress passed legislation requiring the federal Occupational Safety and Health Administration to increase penalties for OSHA violations. Under the State occupational safety and health plan, Alaska is required to raise their standards to comply with the new federal OSHA penalties. If we fail to do so, Alaska could lose its enforcement power to the Federal Agency.

The amendments provide for a maximum of \$70,000 for willful and repeated violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, violations. This is a substantial increase from earlier penalties and more than doubled the increase in penalties that I originally wanted to raise in this legislation.

Congress believes that this increased maximum penalty will encourage businesses to conform to workplace safety laws and regulations. As businesses adjust to a tight economic environment, it is important that worker health and safety not be sacrificed. Maintaining a safe workplace is less costly than facing the potential of high penalties and paying the costs of accidents and injuries. HB 33 will bring Alaska into conformity with Federal law.

According to the latest statistics, Alaska occupational safety and health injury and illness incidence rate is 43% higher than that of the nation and is now the second highest in the nation.

It is my sincere hope that this legislation will result in fewer injuries, fewer fines and lower workers' compensation insurance costs. The continually rising number of injuries and fatalities to Alaskan workers testifies to the ineffectiveness of our present statutes. So long as it is cheaper to pay the fine than to correct a dangerous situation we cannot expect improvement in the workplace.

Crosstabulation: AREA

YEAR->	Count	84	85	86	87	Row Total
AREA						
10 Aleutians	10	247	337	382	410	1376 3.2
20 Anchorage	20	4917	5020	3932	3606	17475 40.9
50 Bethel	50	118	86	92	90	386 .9
60 Bristol Bay	60	46	62	63	58	229 .5
70 Dillingham	70	119	119	112	104	454 1.1
90 Fairbanks	90	1162	1173	932	900	4167 9.7
100 Haines	100	28	20	15	23	86 .2
110 Juneau	110	417	419	282	335	1453 3.4
122 Kenai	122	590	721	623	682	2616 6.1
130 Ketchikan	130	401	385	406	462	1654 3.9
140 Northwest Arctic	140	44	33	28	32	137 .3
150 Kodiak	150	245	223	263	342	1073 2.5
170 Mat-Su	170	516	464	357	294	1631 3.8
180 Nome	180	87	85	75	70	317 .7
185 North Slope	185	1231	1247	872	631	3981 9.3
201 Pr of Wales	201	192	229	249	319	989 2.3
Column Total		11398	11747	9945	9661	42751
(Continued)		26.7	27.5	23.3	22.6	100.0

Crosstabulation: AREA

YEAR->	Count	84	85	86	87	Row Total
AREA						
220 Sitka	220	180	188	232	231	831 1.9
231 Skagway	231	131	206	269	319	925 2.2
240 S E Fairbanks	240	60	45	62	32	199 .5
261 Valdez-Cordova	261	204	199	203	269	875 2.0
270 Wade Hampton	270	39	33	30	41	143 .3
280 Wrang-Ptrsbrg	280	164	270	300	253	987 2.3
290 Yukon-Koyuk	290	168	145	121	119	553 1.3
996 Milti-Area	996		6	4	2	12 .0
998 Out of State	998		29	38	25	92 .2
999 Unknown	999	92	3	3	12	110 .3
Column Total		11398 26.7	11747 27.5	9945 23.3	9661 22.6	42751 100.0

Number of Missing Observations = 0

Crosstabulation: NATURE2

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
10	Amputation / Enu	44	31	28	35	138 .3
11	Asphyxia, Strang	7	3	4	5	19 .0
12	Burn (Heat)	214	248	192	191	845 2.0
13	Burn (Chemical)	60	79	47	66	252 .6
14	Concussion	49	78	98	121	346 .8
15	Infective / Para	11	20	17	11	59 .1
16	Contusion, Crush	1303	1513	1145	1024	4985 11.7
17	Cut, Laceration,	1137	1142	909	1041	4229 9.9
18	Dermatitis	41	42	47	42	172 .4
19	Dislocation	170	188	241	196	795 1.9
20	Electric Shock	7	15	8	8	33 .1
21	Fracture	1014	1053	847	792	3706 8.7
22	Exposure to Low	33	25	17	13	88 .2
23	Hearing Loss / I	3	7	4	11	25 .1
24	Environmental He		2	2	1	5 .0
25	Hernia, Rupture	173	164	130	132	599 1.4
(Continued)	Column Total	11398 26.7	11747 27.5	9945 23.3	9661 22.6	42751 100.0

Crosstabulation: NATURE2

B

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
26	Inflammation	169	108	136	187	600 1.4
27	Poisoning	109	114	107	78	408 1.0
28	Pneumoconiosis	2	2	3		7 .0
29	Radiation Effect	37	34	23	16	110 .3
30	Scratches, Abras	359	318	306	322	1305 3.1
31	Sprains, Strains	5507	5725	4970	4859	21061 49.3
32	Hemorrhoids	11	10	3	2	26 .1
33	Hepatitis	4	6	1	5	16 .0
40	Multiple Injurie	541	503	223	118	1385 3.2
50	Changes in Atmos	7	2	4	1	14 .0
51	Cerebrovascular	5	7	12	10	34 .1
52	Complications -	1		1	1	3 .0
53	Eye Diseases	37	20	22	12	91 .2
54	Mental Disorders	17	17	36	30	100 .2
55	Neoplasm			2	3	5 .0
56	Nervous System	55	87	105	93	340 .8
	Column Total	11398 26.7	11747 27.5	9945 23.3	9661 22.6	42751 100.0

(Continued)

Crosstabulation: NATURE2

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
57	14	23	23	25	85	
Respiratory Syst						.2
58	21	20	29	19	89	
Symptoms & Ill-D						.2
90	1	1	1	1	4	
No Injury or Ill						.0
95	3	1	4	2	10	
Damage to Prosth						.0
99	232	139	198	188	757	
Other Dis/Inj Ne						1.8
Column Total	11398	11747	9945	9661	42751	
	26.7	27.5	23.3	22.6	100.0	

Number of Missing Observations = 0

Why Did Paul Die?

BY JOSEPH A. KINNEY

I get many angry phone calls these days. The callers complain about legislation that has passed a Senate committee that will send bad guys to jail. The callers think they are being slipped a fast one. The legislation, S.2154, will impose criminal penalties upon employers who flagrantly violate the nation's job-safety laws, when a worker is killed or seriously injured. My callers, mostly small businessmen, think any government is too much government. They think jail should be reserved for dope peddlers, rapists, bomb throwers, murderers and anyone who doesn't own a white shirt.

Four years ago, I hardly knew we had job-safety laws. My education came when I was told my brother, Paul, had suffered severe injuries in a scaffold collapse and might die before I could see him.

The trip to Denver and the hospital was a rush of memories. Twenty years earlier, I was a Marine rifleman in Vietnam. My career was cut short by a sucking chest wound. During my walk through the trauma unit where my brother was hospitalized, I noticed patients with fractured skulls, missing limbs and realigned bodies. War was supposed to

do that kind of damage, not peace. To see Paul immobilized and nearing death was a nightmare. So often, when I locked and loaded my M-16 and pulled my flak jacket tight, I thought of Paul back at home with his fourth-grade classmates. I was his John Wayne. Paul's naive letters never let me forget the bright side of life, and they brought a tinge of glory to the uniform that I wore. Two days and eight hours after he reached the hospital, Paul died. He was unconscious from the time he was admitted, and we never had a chance to say goodbye. For my parents, the grief was beyond description.

Paul's employer was guilty of eight federal safety violations, according to the Occupational Safety and Health Administration, which investigated the incident. Months after the \$800 penalty was due, the employer sent in his check to the government. The fine paid, the employer's role in the accident was over. For me, life had changed; a journey was just beginning.

It dawned on me that the minimal OSHA sanctions imposed for Paul's death reflected an accommodation with human expendability. In collecting its \$800 penalty, the government wrote off a massive investment in a life. Paul was just a course short of his electrical-engineering degree. The private and public investment in the making of Paul was at least \$500,000. Society had yet to collect on its investment. In doing the cost accounting of Paul's life, not only the family lost, but society as a whole. The investment in love that we gave Paul cannot be measured. How much is changing diapers worth? Teaching a child to speak and

read? These "investments" cannot be valued by dollars.

On one level, Paul's death was a symbol of the fast and fabulous '80s. That was an era when we worshiped at the altar of deregulation. OSHA, created in 1970, was to the deregulators the sort of busybody intrusion by the government that needed to be rolled back so our society would be more "free." Safety wasn't the obligation of the employer; it was up to the workers to look after themselves. In a free society, well, accidents unfortunately do happen. OSHA's bark, never very loud, was tuned down to a whimper, inaudible in the roar of our fabulous commerce.

Blue-collar death: After Paul's death, I pushed aside my consulting business. I wanted to examine just why he died. My solidly middle-class Kansas origin and Marine background provided perspective. In war, Marine blood shall be shed only in the pursuit of victory. As every Marine knows, commanders who waste blood find their careers shortened. But in commerce, because of weak OSHA sanctions, we have made it legitimate to kill and maim in a way no Marine officer would tolerate. We've reached an accommodation with blue-collar death. Forget that a United States worker is five times more likely to die than a Swede. Sweden has unions, nobody wants unions here. Forget that a U.S. worker is three times more likely to die than a Japanese.

The sad reality is that blue-collar blood pours too easily.

OSHA's fines amount to mere traffic tickets for those who run our companies. The small fines are simply buried in the cost of production. Blood can be cash accounted, given a number and factored with other costs.

Will the 1990s bring change? Our president campaigned on the promise of a kinder and gentler America. We can only hope that

During Labor Day week, a brother reflects on a brother, killed on the job



this promise is extended to workers, who are suffering from record numbers of injuries. We can only hope that his promise will translate into a higher value being placed on life. Early this year, bill S.2154 was introduced. It would make flagrant violations resulting in death or serious bodily injury a potential crime, punishable by prison terms of up to 10 years for death, five for injury.

Why are my callers angry? Are they fearful of being thrown in jail for having unsafe and unhealthy workplaces? Are they fearful of a government that perceives its duty as one of protecting life, liberty and the pursuit of happiness—even for those who will never appreciate the commerce clause of our Constitution? Do they really think something is wrong with the prospect of paying for blue-collar blood with jail rather than a fistful of dollars? No one should fear the prospect of commerce coming to a halt as a result of this legislation. It is only the small minority of business people who have been irresponsible toward the safety and health of their workers who will find themselves facing higher standards of decency and accountability. What a terrible thought.

For Paul—and the 200,000 men and women who have died at work since the first federal job-safety laws were passed 20 years ago—S.2154 is too late. For others, though, it may make a difference. In the name of fairness, they deserve a chance.

Kinney, executive director of the National Safe Workplace Institute, lives in Chicago.

News

United States
Department
of Labor

Office of Information

Washington, D.C. 20210

NBU ✓

Deputy	
Sp Asst	
So Asst	
Info Off	
Adm Asst	
Int Asst	
ASST	
ESD	
LS&S	
W/C	
cc: Rep. Kaganer	
cc:	



Occupational Safety and Health Administration

USDL: 91-28

CONTACT: Frank Kane
OFFICE: (202) 523-8151
AFTER HOURS: (703) 360-7080

FOR RELEASE: 1:00 PM EST
Thursday, Jan. 24, 1991

OSHA ANNOUNCES PROCEDURES FOR IMPLEMENTING NEW SYSTEM OF CIVIL PENALTIES

Procedures for implementing its new system of civil monetary penalties for violations of occupational safety and health law and regulations were announced today by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor.

Congress enacted a seven-fold increase in the maximum limits for such penalties in the Omnibus Budget Reconciliation Act of 1990. The maximum allowable civil penalty now is \$70,000 for each willful or repeated violation; and \$7,000 for each serious or other-than-serious violation as well as \$7,000 for each violation of the posting requirements and \$7,000 for each day beyond a stated abatement date for failure to correct a violation.

Assistant Secretary of Labor Gerard F. Scannell, who heads OSHA, said, "I want to emphasize that these amounts are ceilings--not floors. We will not automatically assess penalties that are seven times what they were previously, although there will be some increases."

He added that OSHA's basic approach will remain the same--striving for voluntary compliance by America's employers with occupational safety and health requirements.

The new civil penalty policy will be applicable to citations issued as the result of inspections initiated after March 1, 1991, for violations occurring after Nov. 5, 1990--the effective date of the Budget Reconciliation Act.

The procedures for implementing the new penalty policy are contained in a new chapter for OSHA's Field Operations Manual which is being distributed to all the agency's regional and area offices.

As in the past, when calculating penalties, OSHA will take into account these factors: the gravity of the violation; the size of the employer as determined by the number of employees; the employer's good faith as principally demonstrated by efforts to implement a sound, effective workplace safety and health program such as given in the voluntary "Safety and Health Management Guidelines" issued by OSHA in January, 1989; and the employer's past history of compliance with the Occupational Safety and Health Act and OSHA regulations.

"The largest monetary penalties will be reserved for those employers who demonstrate the least concern with their workers' safety and health and who expose those workers to the most serious hazards," Scannell said.

This is in line with Congress's aim in establishing larger maximum penalties as a deterrent to employers who might otherwise decide to ignore workplace safety and health requirements.

To ensure that the most flagrant violators are in fact fined at an effective level, a minimum penalty of \$5,000 for a willful violation of the OSH Act was adopted by Congress. Specific language in the legislative history of the Budget Reconciliation Act, however, gives OSHA the discretion to adjust this amount during a settlement process.

The new penalty system also will apply to those states with OSHA-approved state occupational safety and health programs, under the Congressional direction that these state plans must be "as least as effective" as the national plan. The participating states are being given a reasonable time to implement the new penalty structure which takes into account the states' legislative calendars.

###



ADVANCE COPY

OSHA Instruction CPL 2.45B CH-2
March 1, 1991
Office of General Industry Compliance Assistance

SUBJECT: Change to the Revised Field Operations Manual (FOM)

- A. Purpose. This instruction transmits page changes to the revised FOM, OSHA Instruction CPL 2.45B, June 15, 1989.
- B. Scope. This instruction applies CSHA-wide.
- C. References.
1. OSHA Instruction CPL 2.51E, July 9, 1990, Appropriations Act for Fiscal Year 1990.
 2. OSHA Instruction CPL 2.80, October 1, 1990, Handling of Cases to be Proposed for Violation-by-Violation Penalties.
- D. Action.
1. Replace existing pages with attached CH-2 pages as listed below:

<u>Existing Pages</u>	<u>Replacement Pages</u>
Table of Contents 8 and 9 VI-1 through VI-29	Table of Contents 8 and 9 VI-1 through VI-29
 2. Retain existing pages VI-1 through VI-29 to be used in accordance with F., Effective Dates, of this instruction.
- E. Federal Program Change. This instruction describes a change in the Federal OSHA program which affects State programs. All States with OSHA-approved State programs will have to effect changes in their State occupational safety and health statutes to implement this change; States are being notified of this requirement by separate memorandum. A separate directive also will be issued subsequent to issuance of this instruction describing further requirements for State response.
- F. Effective Dates.
1. This change to the FOM implements amendments to the civil penalties provisions of the Occupational Safety and Health Act that were included in the Budget Reconciliation Act of 1990, which was signed into law on November 5, 1990.

amount for high gravity violations. Revised definitions for high, moderate, and low gravity violations are given.

10. Gravity Calculations for Combined or Grouped Violations (page VI-7). Revised penalty guidelines for such violations are provided in line with new severity and probability assessments.
11. Penalty Adjustment Factors (page VI-9). Adjustments for size, good faith, and history have been modified. The total potential penalty adjustment is now 95 percent. Guidelines are provided for limitations on the application of some factors based on the nature of the violation.
12. Size (page VI-9). Size reduction now ranges from zero to 60 percent.
13. Good Faith (page VI-10). The good faith reduction may be zero, 15, or 25 percent depending on the effectiveness of the employer's safety and health program.
14. History (page VI-11). Guidelines for the application of the 10-percent history adjustment are simplified.
15. Effect on Penalties if Employer Immediately Corrects or Initiates Corrective Action (page VI-11). This will no longer be considered in determining the good faith credit.
16. Failure to Abate (page VI-11). Clarified directions are provided for failure-to-abate situations. The minimum penalty for failure to abate is now \$1,000. Penalties are to be adjusted only for the size of the employer. Additional penalties may be assessed up to 30 days by the Area Office; if a penalty more than 30 times the daily calculated amount is deemed appropriate by the Regional Administrator, the case shall be handled under OSHA's violation-by-violation penalty procedures.
17. Partial Abatement (page VI-13). The Regional Administrator may authorize a reduction of 25 to 75 percent of the additional calculated penalty where the employer has partially abated the violation.
18. Repeated Violations (page VI-13). The new maximum penalty is \$70,000. The size of the employer (above or below 250 employees) determines the amount of the penalty increase factor. The Regional Administrator may authorize a higher factor for smaller employers, where warranted.
19. Willful Violations (page VI-14). The adjustment factors for size and history will be applied, and the adjusted gravity-based penalty is multiplied by seven. The Regional Administrator may assess a higher penalty, up to the maximum of

CORRECTION

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OSHA Instruction CPL 2.45B CH-2
March 1, 1991
Office of General Industry Compliance Assistance

SUBJECT: Change to the Revised Field Operations Manual (FOM)

- A. Purpose. This instruction transmits page changes to the revised FOM, OSHA Instruction CPL 2.45B, June 15, 1989.
- B. Scope. This instruction applies OSHA-wide.
- C. References.
1. OSHA Instruction CPL 2.51E, July 9, 1990, Appropriations Act for Fiscal Year 1990.
 2. OSHA Instruction CPL 2.80, October 1, 1990, Handling of Cases to be Proposed for Violation-by-Violation Penalties.
- D. Action.
1. Replace existing pages with attached CH-2 pages as listed below:

<u>Existing Pages</u>	<u>Replacement Pages</u>
Table of Contents 8 and 9 VI-1 through VI-29	Table of Contents 8 and 9 VI-1 through VI-29
 2. Retain existing pages VI-1 through VI-29 to be used in accordance with F., Effective Dates, of this instruction.
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- F. Effective Dates.
1. This change to the FOM implements amendments to the civil penalties provisions of the Occupational Safety and Health Act that were included in the Budget Reconciliation Act of 1990, which was signed into law on November 5, 1990.

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2. The change (revised Chapter VI) applies to all inspections initiated on or after March 1, 1991. The guidelines for penalty calculation contained therein shall apply to all violations determined to be existing on or after November 5, 1990.
 3. For violations determined to be existing before November 5, 1990, the guidelines contained in the FOM as of June 15, 1989, shall be applied. For this reason, the previous pages of Chapter VI shall be retained and used with regard to these violations for as long as may be necessary. In a few situations, violations of both types may be encountered in a single case.
- G. Significant Changes. The changes to Chapter VI in this instruction represent a major revision of OSHA's penalty policies and procedures, in accordance with amendments to the civil penalties provisions of the Occupational Safety and Health Act that were included in the Budget Reconciliation Act of 1990. Individual text changes are indicated in the left margin.
1. General Policy (page VI-1). Clarifies the intent of Congress that penalty amounts should be sufficient to serve as an effective deterrent to violations.
 2. Civil Penalties (page VI-1). This section has been reorganized to incorporate increased penalty amounts and a simplified system for penalty calculation.
 3. Type of Violation as a Factor (page VI-1). Describes new maximum penalty amounts established by the Budget Reconciliation Act of 1990.
 4. Statutory Authority (page VI-2). Notes the authority for serious, other-than-serious, and posting violations.
 5. Minimum Penalties (page VI-2). Includes the new statutory minimum penalty of \$5,000 for a willful violation.
 6. Gravity of Violations (page VI-2). Severity and probability are defined as assessments, rather than factors, in determining the gravity of a violation.
 7. Severity Assessment (page VI-3). Severity is categorized as high, medium, low, or minimal, without numerical values.
 8. Probability (page VI-3). Probability is categorized as greater or lesser, without numerical values. Factors to be considered in determining this categorization are described.
 9. Gravity-based Penalty (page VI-6). The gravity-based penalty is now determined by a combination of the severity and probability assessments, in accordance with the scale given. The Regional Administrator may authorize the maximum penalty

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amount for high gravity violations. Revised definitions for high, moderate, and low gravity violations are given.

10. Gravity Calculations for Combined or Grouped Violations (page VI-7). Revised penalty guidelines for such violations are provided in line with new severity and probability assessments.
11. Penalty Adjustment Factors (page VI-9). Adjustments for size, good faith, and history have been modified. The total potential penalty adjustment is now 95 percent. Guidelines are provided for limitations on the application of some factors based on the nature of the violation.
12. Size (page VI-9). Size reduction now ranges from zero to 60 percent.
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19. Willful Violations (page VI-14). The adjustment factors for size and history will be applied, and the adjusted gravity-based penalty is multiplied by seven. The Regional Administrator may assess a higher penalty, up to the maximum of

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\$70,000, or a lower penalty, where warranted. The minimum of \$5,000 applies in all cases.

20. Regulatory Violations (page VI-15). Higher penalties are established for violations of 29 CFR 1903 and 1904. Only the adjustment factors for size and history will be applied.
21. Access to Records (page VI-17). This now includes violations of 29 CFR 1910.20, but no longer includes OSHA access cases.
22. Penalty Table (page VI-18). This new table of adjusted penalties replaces former Penalty Tables A and B.
23. Referral of Uncollected Debt to the Solicitor (page VI-28). The normal threshold amount for referral to the Regional Solicitor is raised from \$1,000 to \$5,000.



Gerard F. Scannell
Assistant Secretary

DISTRIBUTION: National, Regional, and Area Offices
All Compliance Officers
State Designees
NIOSH Regional Program Directors
7(c)(1) Project Managers

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CHAPTER VI

PENALTIES

- A. General Policy. The penalty structure provided under Section 17 of the Act is designed primarily to provide an incentive toward correcting violations voluntarily, not only to the offending employer but, more especially, to other employers who may be guilty of the same infractions of the standards or regulations.
1. OSHA has always taken the position that penalties are not designed as punishment for violations nor as a source of income for the Agency. The Congress has made clear its intent, however, that penalty amounts should be sufficient to serve as an effective deterrent to violations.
 2. Large proposed penalties, as Congress has clearly recognized, serve the public purpose intended under the Act; and criteria guiding approval of such penalties by the Assistant Secretary are based on meeting this public purpose. (See B.9.d. and OSHA Instruction CPL 2.80.)
- B. Civil Penalties.
1. Type of Violation as a Factor. In proposing civil penalties for violations, a distinction is made between serious violations and other violations. There is no statutory requirement that a penalty be proposed when the violation is not serious; but a penalty must be proposed when the violation is serious.
 - a. The maximum penalty that may be proposed for a serious or an other-than-serious violation is \$7,000.
 - b. In the case of willful or repeated violations, a civil penalty of up to \$70,000 may be proposed; but the penalty may not be less than \$5,000 for a willful violation.
 - c. For other specific violations of the Act, civil penalties of up to \$7,000 may be proposed.
 - d. Penalties for failure to correct a violation may be up to \$7,000 for each calendar day that the violation continues beyond the final abatement date.

2. Statutory Authority. Section 17 provides the Secretary with the statutory authority to assess civil penalties for violations of the Act.
 - a. Section 17(b) of the Act provides that any employer who has received a citation for an alleged violation of the Act which is determined to be of a serious nature shall be assessed a civil penalty of up to \$7,000 for each violation. (See OSHA Instruction CPL 2.51E for current Congressional exemptions and limitations placed on penalties by the Appropriations Act.)
 - b. Section 17(c) provides that, when the violation is specifically determined not to be of a serious nature, a proposed civil penalty of up to \$7,000 may be assessed for each violation.
 - c. Section 17(i) provides that, when a violation of a posting requirement is cited, a civil penalty of up to \$7,000 shall be assessed.
3. Minimum Penalties. The following guidelines apply:
 - a. The proposed penalty for any willful violation shall not be less than \$5,000. This is a statutory minimum and not subject to administrative discretion.
 - b. When the adjusted proposed penalty for an other-than-serious violation (citation item) would amount to less than \$100, no penalty shall be proposed for that violation.
 - c. When, however, there is a citation item for a posting violation, this minimum penalty amount does not apply with respect to that item since penalties for such items are mandatory under the Act.
4. Penalty Factors. Section 17(j) of the Act provides that penalties shall be assessed on the basis of four factors:
 - a. The gravity of the violation,
 - b. The size of the business,
 - c. The good faith of the employer, and
 - d. The employer's history of previous violations.
5. Gravity of Violation. The gravity of the violation is the primary consideration in determining penalty amounts. It shall be the basis for calculating the basic penalty for both serious and other violations.

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- a. To determine the gravity of a violation the following two assessments shall be made:
 - (1) The severity of the injury or illness which could result from the alleged violation.
 - (2) The probability that an injury or illness could occur as a result of the alleged violation.
 - b. The size of the business, the good faith of the employer and the history of previous violations shall be taken into account in deciding whether and the extent to which the gravity-based penalty shall be reduced.
6. Severity Assessment. The classification of the alleged violations as serious or other-than-serious, in accordance with the instructions in Chapter IV of the FOM, is based on the severity of the injury or illness that could result from the violation. This classification constitutes the first step in determining the gravity of the violation. The most serious injury or illness which is reasonably predictable as a result of an employee's exposure to the safety or health hazard cited shall be assigned a severity assessment in accordance with the following factors:
- a. High Severity: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.
 - b. Medium Severity: Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited period of disability.
 - c. Low Severity: Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.
 - d. Minimal Severity: Other-than-serious violations. Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the injury or illness most likely to result would probably not cause death or serious physical harm.
7. Probability Assessment. The probability that an injury or illness will result from a hazard has no role in determining the classification of a violation but does affect the amount of the penalty to be proposed.
- a. Categorization. Probability shall be categorized either as greater or as lesser probability.
 - (1) Greater probability results when the likelihood that an injury or illness will occur is judged to be relatively high.

- (2) Lesser probability results when the likelihood that an injury or illness will occur is judged to be relatively low.
- b. Determination. The CSHO, using professional judgment, shall identify and evaluate as far as possible all of the factors influencing the likelihood of the occurrence of an injury or illness and shall assign them a weight in accordance with the relative contribution of each.
- c. Safety Violations. The following circumstances shall normally be considered (and documented in the case file) when violations likely to result in injury are involved:
- (1) Number of workers exposed to the hazardous conditions, both at the same time and sequentially.
 - (2) Frequency of exposure, including one-time, short exposures through more frequent exposures from once a week up to exposures of more than once a week up to continuous daily exposure.
 - (3) Employee proximity to the hazardous conditions likely to lead to an accident, anywhere from the fringe of danger zone up to the point of danger.
 - (4) Working conditions including environmental and other factors (e.g., speed of operations, lighting, temperature, weather conditions, noise, housekeeping, etc.) which may cause employee stress and thereby increase the likelihood of an accident.
- d. Health Violations. The following circumstances shall normally be considered (and documented in the case file) when violations likely to result in illness are involved:
- (1) Number of workers exposed to the hazardous conditions, both at the same time and sequentially.
 - (2) Duration of employee overexposures to hazardous levels of contaminants or other illness-producing conditions, ranging from relatively short exposures of less than one hour to continuous daily exposures.
 - (3) Use of appropriate personal protective equipment; whether, for example, such equipment is utilized by all exposed employees and the employer has an effective PPE program in effect down to

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whether it is not utilized by any of the exposed employees and the employer has no program.

- (4) Medical surveillance program is in place as appropriate and effectively protects the employees, a defective program which only partially and inadequately protects them, or no medical surveillance program is in effect.
- e. Other factors. There are other factors which may affect significantly the probability that the hazard will produce an injury or illness and they shall also be considered (and documented):
- (1) Mitigating circumstances, such as specific safety or health instructions, effective training programs, a comprehensive safety and health program, evidence of correction underway, warning signs and labels or special procedures, or mandatory administrative controls providing some, though not complete protection, shall be documented and considered in the final evaluation of probability.
 - (2) Similarly, contributing circumstances, such as inappropriate or inadequate safety or health instructions, inadequate or no training, a poor or nonexistent safety and health program, or widespread hazardous conditions or faulty equipment, with little or no attempt to control them, shall be documented and considered in the final evaluation of probability.
- f. Final Probability Assessment. All of the factors outlined above shall be considered together in arriving at a final probability assessment.
- (1) A factor shall not materially affect the final probability assessment if, based on the professional judgment of the CSHO as documented in the case file, it:
 - (a) Does not significantly influence the probability of an injury- or illness-causing condition; or
 - (b) Would tend to dilute the penalty excessively.

EXAMPLE. In a particularly dangerous trenching situation or in a confined space where there is insufficient oxygen to support life, even when only one or two employees are exposed, it may be appropriate to reduce the weight that might otherwise be given to the number of employees exposed.

- (2) When strict adherence to the probability assessment procedures would result in an unreasonably high or low gravity (See B. 5.), the CSHO shall use professional judgment to adjust the probability appropriately. Such decisions shall be adequately documented in the case file.

8. Gravity-based Penalty. The gravity-based penalty (GBP) is an unadjusted penalty and is calculated in accordance with the following procedures:

- a. The GBP for each violation shall be determined based on an appropriate and balanced professional judgment combining the severity assessment and the final probability assessment.
- b. For serious violations, the GBP shall be assigned on the basis of the following scale:

<u>Severity</u>	<u>Probability</u>	<u>GBP</u>
High	Greater	\$5,000
Medium	Greater	\$3,500
Low	Greater	\$2,500
High	Lesser	\$2,500
Medium	Lesser	\$2,000
Low	Lesser	\$1,500

- c. The highest gravity classification (high severity and greater probability) shall normally be reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury. If the Regional Administrator determines that it is appropriate to achieve the necessary deterrent effect, a GBP of \$7,000 may be proposed. The reasons for this determination shall be documented in the case file.
- d. The gravity of a violation is defined by the GBP.
 - (1) A high gravity violation is one with a GBP of \$5,000 or greater.
 - (2) A moderate gravity violation is one with a GBP of \$2,000 to \$3,500.
 - (3) A low gravity violation is one with a GBP of \$1,500.
- e. For other-than-serious safety and health violations, there is no severity assessment.

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- (1) Other-than-serious safety and health violations judged to be of greater probability shall be assigned a GBP of \$1,000 to which appropriate adjustment factors shall be applied. (See B.10.)
 - (2) Other-than-serious safety and health violations judged to be of lesser probability shall be cited with no penalty.
 - (3) The Regional Administrator may authorize a penalty up to \$7,000 for an other-than-serious violation when it is determined to be appropriate to achieve the necessary deterrent effect. The reasons for such a determination shall be documented in the case file.
- f. Penalties to be proposed for other-than-serious regulatory violations (29 CFR 1903 and 1904) are discussed at B.16.
- g. A GBP may be assigned in some cases without using the severity and the probability assessment procedures outlined in B.7. when these procedures cannot appropriately be used. (See Chapter IV, C.8.a, for an example—shipped containers under the Hazard Communication Standard.)
- h. The Penalty Table (Table VI-1, page VI-18) shall be used for determining appropriate adjusted penalties for serious and other-than-serious violations.
9. Gravity Calculations for Combined or Grouped Violations. The following procedures apply to the calculation of penalties for combined and grouped violations:
- a. The severity and the probability assessments for combined violations shall be based on the instance with the highest gravity. It is not necessary to complete the penalty calculations for each instance or subitem of a combined or grouped violation if it is clear which instance will have the highest gravity.
 - b. For grouped violations, the following special guidelines shall be adhered to:
 - (1) Severity Assessment. There are two considerations to be kept in mind in calculating the severity of grouped violations:
 - (a) The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item.

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- (b) If a more serious injury or illness is reasonably predictable from the grouped items than from any single violation item, the more serious injury or illness shall serve as the basis for the calculation of the severity factor of the grouped violation.
- (2) Probability Assessment. There are three considerations to be kept in mind in calculating the probability of grouped violations:
- (a) The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness.
 - (b) If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for the calculation of the probability assessment of the grouped violation.
 - (c) Some individual probability factors may be increased by grouping and others may not. The increased values shall be used in the probability calculation if, in the professional judgment of the CSHO, a more appropriate probability assessment will result. For example, the number of employees exposed may be increased while the proximity factor may not.
- (3) Gravity-based Penalty. A single severity assessment and a single probability assessment for the combined or grouped violation will result from the foregoing considerations. That result shall be the basis for determining an appropriate GBP for the violation item according to the guidelines in B.8. The penalty shall be entered in the penalty column of the OSHA-2 across from the first item of the violation.
- c. Combined and grouped violations shall normally be considered as one violation for penalty purposes, and in such cases the guidelines for calculating penalties given in B.6. through B.8. shall apply.
 - d. In egregious cases; i.e., willful, repeated and high gravity serious citations and failures to abate, an additional factor of up to the number of violation instances (number of days since the abatement date for failure to abate) may be applied to the gravity-based penalty calculated in accordance with B.8. or the regulatory penalty assigned in accordance with B.16. and adjusted in accordance with B.10, as described in each of

the subsections. Such cases shall be handled in accordance with OSHA Instruction CPL 2.80. Penalties calculated with this additional factor shall not be proposed without the concurrence of the Assistant Secretary.

10. Penalty Adjustment Factors. The GBP may be reduced by as much as 95 per cent depending upon the employer's "good faith," "size of business," and "history of previous violations." Up to 60-percent reduction is permitted for size; up to 25-percent reduction for good faith, and 10-percent for history.

- a. Since these rates are based on the general character of a business and its safety and health performance, the rates shall generally be calculated only once for each employer—after the classification and probability ratings have been determined for each violation and the general character of the employer's performance is apparent.
- b. Penalties assessed for violations that are classified as high severity and greater probability shall be adjusted only for size and history.
- c. Penalties assessed for violations that are classified as repeated shall be adjusted only for size.
- d. Penalties assessed for violations classified as willful shall have been adjusted only for size and history.
- e. The rate of penalty reduction for size of business, employer's good faith and employer's history of previous violations shall be calculated on the basis of the criteria described in the following paragraphs:

(1) Size. A maximum penalty reduction of 60 percent is permitted for small businesses. "Size of business" shall be measured on the basis of the maximum number of employees of an employer at all work-places at any one time during the previous 12 months. Information on the total number of an employer's employees can generally be obtained at the inspected worksite. However, on occasion it may be necessary to obtain or confirm the information from the employer's headquarters.

(a) The rates of reduction to be applied are as follows:

<u>Employees</u>	<u>Percent reduction</u>
1-25	60
26-100	40
101-250	20
251 or more	None

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- (b) An employer's ability to pay a penalty shall not normally be investigated or considered in determining the penalty reduction for size of business.
 - (c) However, if an employer presents convincing evidence of inability to pay a penalty because of financial difficulties at an informal conference, the Area Director may determine that a penalty reduction is appropriate. Such a determination shall be documented in the case file.
 - (d) When a small business has one or more serious violations of high gravity or a number of serious violations of moderate gravity, indicating a lack of concern for employee safety and health, the Area Director may determine that only a partial reduction in penalty shall be permitted for size of business.
- (2) Good Faith. A penalty reduction of up to 25 percent is permitted in recognition of an employer's "good faith."
- (a) A reduction of 25 percent shall normally be given if the employer has a written safety and health program (as documented during the inspection) that has been effectively implemented in the workplace and that:
 - 1 Provides for appropriate management commitment and employee involvement; worksite analysis for the purpose of hazard identification; hazard prevention and control measures; and safety and health training.

NOTE: One example of a framework for such a program is given in OSHA's voluntary "Safety and Health Program Management Guidelines" (Federal Register, Vol. 54, No. 16, January 26, 1989, pp. 3904-3916, or later revisions as published).
 - 2 Includes all programs required under OSHA standards applicable to the workplace (e.g., hazard communication, lockout-tagout, hazardous materials and emergency response, safety and health programs for construction [29 CFR 1926.20] and trenching and excavation).
 - 3 Has deficiencies that are only incidental.

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- (b) A reduction of 15 percent shall normally be given if the employer has a documented safety and health program, but with more than only incidental deficiencies.
 - (c) No reduction shall be given to an employer who has no safety and health program.
 - (3) History. A reduction of 10 percent shall be given to employers who have not been cited by OSHA for any serious, willful, or repeated violations in the past three years.
 - (4) Total. The total reduction will normally be the sum of the reductions for each adjustment factors.
11. Imminent Danger Situations. Detailed instructions and procedures for handling allegations of imminent danger situations are contained in Chapter VII. Penalties shall be assessed in accordance with the following:
- a. Classification. An imminent danger situation normally will involve a serious, willful or repeated violation.
 - b. Proposed Penalties. Penalties shall be proposed in cases where citations are issued in imminent danger situations even though, after being informed by the CSHO, the employer immediately eliminates the imminence of the danger and initiates steps to abate the hazard. The procedures given in this chapter for calculating and assessing proposed penalties shall be applied in the case of imminent danger situations, as appropriate.
12. Effect on Penalties If Employer Immediately Corrects or Initiates Corrective Action. Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of such alleged violation by the CSHO, the employer immediately corrects or initiates steps to correct the hazard.
13. Failure to Abate. A Notification of Failure to Abate an Alleged Violation (OSHA-2B) shall be issued in cases where violations have not been corrected as required.
- a. Failure to Abate. Failure to abate penalties shall be applied when an employer has not corrected a previously cited violation which had become a final order of the Commission.
 - b. Employer Contest. If an employer contests one or more of the alleged violations, the period for abatement does not begin to run, as to those

items contested, until the day following the entry of the final order by the Review Commission affirming the citation.

- (1) If the employer contests only the amount of the proposed penalty, the employer must correct the alleged violation within the prescribed abatement period.
- (2) If an employer contests an abatement date in good faith, a Failure to Abate Notice shall not be issued for the item contested until a final order affirming a date is entered, the new abatement period, if any, has been completed, and the employer has still failed to abate.

c. Calculation of Additional Penalties. A GBP for unabated violations is to be calculated for failure to abate a serious or other-than-serious violation on the basis of the facts noted upon reinspection. This recalculated GBP, however, shall not be less than that proposed for the item when originally cited, except as provided in B.13.e.

- (1) In those instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the supervisor. In no case shall the penalty be less than \$1,000.
- (2) Only the adjustment factor for size—based upon the circumstances noted during the reinspection—shall then be applied to arrive at the daily proposed penalty.
- (3) The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated.
 - (a) The number of days unabated shall be counted from the day following the abatement date specified in the citation or the final order. It will include all calendar days between that date and the date of reinspection, excluding the date of reinspection.
 - (b) Normally the total proposed penalty for failure to abate a particular violation shall not exceed 30 times the amount of the daily proposed penalty.
 - (c) If a penalty beyond this amount is deemed appropriate by the Regional Administrator, the case shall be treated under the violation-by-violation penalty procedures established in OSHA Instruction CPL 2.80.

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- (4) In unusual circumstances, such as where the gravity of the violation is at the highest level (high severity and greater probability) or the employer has willfully failed to abate the violation or has failed to abate a second time, higher penalties shall be proposed. In such situations the proposed penalty shall be approved by the Regional Administrator.
- d. Partial Abatement. When the citation has been partially abated, the Regional Administrator may authorize a reduction of 25 percent to 75 percent to the amount of the proposed penalty calculated as outlined in B.13.c. The reasons for this action shall be documented in the case file.
- (1) When a violation consists of a number of instances and the followup inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty shall take into consideration the extent that the violation has been abated.
- EXAMPLE: Where 3 out of 5 instances have been corrected, the daily proposed penalty (calculated as outlined in B.13.c. without regard to any partial abatement) may be reduced by 60 per cent.
- (2) In multi-step correction items, only the failure to comply with substantive (rather than procedural) requirements shall generally incur a full failure to abate penalty.
- (3) On rare occasions, when the Area Director decides to issue a Failure to Abate Notice for failure to comply with procedural requirements, the calculation of the daily proposed penalty shall consider the extent to which a violation has been substantially abated, with the daily proposed penalty (calculated as outlined in B.13.c. without regard to any partial abatement) reduced accordingly.
- e. Good Faith Effort to Abate. When the CSHO believes and so documents in the case file that the employer has made good faith efforts to correct the violation and had good reason to believe that it was fully abated, the Area Director may reduce or eliminate the daily proposed penalty that would otherwise be justified.
14. Repeated Violations. Section 17(a) of the Act provides that an employer who repeatedly violates the Act may be assessed a civil penalty of not more than \$70,000 for each violation.

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- a. Gravity-Based Penalty Factors. Each violation shall be classified as serious or other-than-serious. A GBP shall then be calculated for repeated violations based on facts noted during the current inspection. Only the adjustment factor for size, appropriate to the facts at the time of the reinspection, shall be applied.
- b. Penalty Increase Factors. The amount of the increased penalty to be assessed for a repeated violation shall be determined by the size of the employer.
 - (1) Smaller employers. For employers with 250 or fewer employees, the GBP shall be doubled for the first repeated violation and quintupled if the violation has been cited twice before. If the Regional Administrator determines that it is appropriate to achieve the necessary deterrent effect, the GBP may be multiplied by 10.
 - (2) Larger employers. For employers with more than 250 employees, the GBP shall be multiplied by 5 for the first repeated violation and multiplied by 10 if the violation has been cited twice before.
- c. Other-than-serious, No Initial Penalty. For a repeated other-than-serious violation that otherwise would have no initial penalty, a penalty of \$200 shall be assessed for the first repeated violation, \$500 if the violation has been cited twice before, and \$1,000 for a third repetition.
- d. Regulatory Violations. For repeated violations of regulatory violations [see B.16.], the initial penalty shall be doubled for the first repeated violation and quintupled if the violation has been cited twice before. If the Regional Administrator determines that it is appropriate to achieve the necessary deterrent effect, the initial penalty may be multiplied by 10.

NOTE: See Chapter IV, B.5., for additional guidance on citing repeated violations.

15. Willful Violations. Section 17(a) of the Act provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than \$70,000 but not less than \$5,000 for each violation.
 - a. Gravity and Penalty Factors. Each violation shall be classified as serious or other-than-serious. After determining the gravity of the violation, a GBP shall be determined based on the facts noted during the inspection. The adjustment factors for size and history shall be applied.
 - (1) Serious Violations. For willful serious violations, the adjusted GBP shall be multiplied by seven.

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- (a) In no case shall the proposed penalty be less than \$5,000.
 - (b) The Regional Administrator may assess a higher penalty (up to the statutory maximum of \$70,000) or a lower penalty than that calculated in accordance with B.15.a.(1), upon consideration of such factors as the degree of willfulness involved in the violation and the achievement of an appropriate deterrent effect. The reasons for such action shall be documented in the case file.
- (2) Other-than-serious Violations. For willful other-than-serious violations, the minimum willful penalty of \$5,000 shall be assessed.
- b. Regulatory Violations. In the case of regulatory violations [see B.16] that are determined to be willful, the unadjusted initial penalty shall be multiplied by seven. In no event shall the penalty, after adjustment for size and history, be less than \$5,000.
16. Violation of 29 CFR 1903 and 1904 Regulatory Requirements. Except as provided in the Appropriations Act, Section 17 of the Act provides that an employer who violates any of the posting requirements shall be assessed a civil penalty of up to \$7,000 for each violation and may be assessed a like penalty for record-keeping violations. For egregious violations, an additional factor may be applied, as described at B.9.d, in accordance with the procedures set forth in OSHA Instruction CPL 2.80.
- a. General Application. The procedures that follow shall be used in determining proposed penalties for violations of 29 CFR 1903 and 1904 regulatory requirements only when the employer has received a copy of the "Recordkeeping Requirements" booklet or has knowledge of the requirements.
 - (1) If the employer has not received the booklet and does not have knowledge, citations without proposed penalties will be issued.
 - (2) All proposed penalties for regulatory violations shall have the adjustment factors for size and history applied.
 - b. Posting Requirements. Penalties for violation of posting requirements shall be proposed as follows:
 - (1) OSHA Notice. If the employer has not displayed (posted) the notice furnished by the Occupational Safety and Health Administration as prescribed in 29 CFR 1903.2 (a), an other-than-serious

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citation shall normally be issued. The unadjusted penalty for this alleged violation shall be \$1,000.

- (2) Annual Summary. If an employer fails to post the summary portion of the OSHA-200 Form during the month of February, as required by 29 CFR 1904.5(d)(1), an other-than-serious citation shall be issued with an unadjusted penalty of \$1,000.
- (3) Citation. If an employer received a citation that has not been posted as prescribed in 29 CFR 1903.16, an other-than-serious citation shall normally be issued. The unadjusted penalty shall be \$3,000.

c. Reporting and Recordkeeping Requirements. Section 17(c) of the Act provides that violations of the recordkeeping and reporting requirements may be assessed civil penalties of up to \$7,000 for each violation.

- (1) OSHA-200 and OSHA-101 Forms. If the employer does not maintain the Log and Summary of Occupational Injuries and Illnesses, OSHA-200 Form, and the Supplementary Record, OSHA-101 Form (or equivalent), as prescribed in 29 CFR 1904, an other-than-serious citation shall be issued. There shall be an unadjusted penalty of \$1,000 for each OSHA form not maintained.

NOTE: When no recordable injuries or illnesses have occurred at a workplace over the last calendar year, these forms shall be considered as having been maintained, since no entries would appear in them.

- (2) Reporting. Employers are required to report either orally or in writing to the nearest Area Office within 48 hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the hospitalization of five or more employees.
 - (a) An other-than-serious citation shall be issued for failure to report such an occurrence. The unadjusted penalty shall be \$5,000.
 - (b) If the Regional Administrator determines that it is appropriate to achieve the necessary deterrent effect, an unadjusted penalty of \$7,000 may be assessed.

d. Grouping. Violations of the posting and recordkeeping requirements which involve the same document (e.g., summary portion of the

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OSHA-200 Form was neither posted nor maintained) shall be grouped as an other-than-serious violation for penalty purposes. The unadjusted penalty for the grouped violations would then take on the highest dollar value of the individual items, which will normally be \$1,000.

e. Access to Records.

- (1) 29 CFR 1904. If the employer fails upon request to provide records required in Section 1904.2 for inspection and copying by any employee, former employee, or authorized representative of employees, a citation for violation of 29 CFR 1904.7(b)(1) shall normally be issued. The unadjusted penalty shall be \$1,000 for each form not made available.
 - (a) Thus, if the OSHA-200 for the 3 preceding years is not made available, the unadjusted penalty would be \$3,000.
 - (b) If the employer is to be cited for failure to maintain these records, no citation of 1904.7 shall be issued.
- (2) 29 CFR 1910.20. If the employer is cited for failing to provide records as required under 29 CFR 1910.20 for inspection and copying by any employee, former employee, or authorized representative of employees, an unadjusted penalty of \$1,000 shall be proposed.

- f. Notification Requirements. When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by 29 CFR 1903.6, an other-than-serious citation shall be issued with an unadjusted penalty of \$2,000.

TABLE VI-1
 PENALTY TABLE

Percent Reduction	PENALTY (in dollars)							
	1,000	1,500	2,000	2,500	3,000	3,500	5,000	7,000
0	1,000	1,500	2,000	2,500	3,000	3,500	5,000	7,000
10	900	1,350	1,800	2,250	2,700	3,150	4,500	6,300
15	850	1,275	1,700	2,125	2,550	2,975	4,250*	5,950*
20	800	1,200	1,600	2,000	2,400	2,800	4,000	5,600
25	750	1,125	1,500	1,875	2,250	2,625	3,750*	5,250*
30	700	1,050	1,400	1,750	2,100	2,450	3,500	4,900
35	650	975	1,300	1,625	1,950	2,275	3,250*	4,550*
40	600	900	1,200	1,500	1,800	2,100	3,000	4,200
45	550	825	1,100	1,375	1,650	1,925	2,750*	3,350*
50	500	750	1,000	1,250	1,500	1,750	2,500	3,500
55	450	675	900	1,125	1,350	1,575	2,250*	3,150*
60	400	600	800	1,000	1,200	1,400	2,000	2,800
65	350	525	700	875	1,050	1,225	1,750*	2,450*
70	300	450	600	750	900	1,050	1,500	2,100
75	250	375	500	625	750	875	1,250*	1,750*
85	150	225	300	375	450	525	750*	1,050*
95	50	75	100	125	150	175	250*	350*

* Starred figures represent penalty amounts that would not normally be proposed for high gravity serious violations because no adjustment for good faith is made in such cases. They may occasionally be applicable for other-than-serious violations where the Regional Administrator has determined a high unadjusted penalty amount to be warranted.

C. Criminal Penalties.

1. The Act and the U.S. Code provide for criminal penalties in the following cases:
 - a. Willful violations causing death. (Section 17(e).)
 - b. Giving unauthorized advance notice. (Section 17(f).)
 - c. Giving false information. (Section 17(g).)
 - d. Killing, assaulting or hampering the work of a CSHO. (Section 17(h)(2).)
2. Criminal penalties are imposed by the courts after trials and not by the Occupational Safety and Health Administration or the Occupational Safety and Health Review Commission.

D. Handling Monies Received from Employers.

1. Responsibility of Area Director. The Area Director is responsible for informing employers of OSHA's debt collection procedures, collecting assessed penalties from employers, reporting penalty amounts collected and those due, calculating interest and other charges on overdue penalty amounts, referring cases with uncollected penalties to the National Office, transferring selected cases to the Regional Solicitor for legal action and tracking such cases, and mailing collected monies in accordance with the procedures given in this chapter and in OSHA Instruction ADM 1-1.12A, Chapter XXIII, and other relevant OSHA instructions.
2. Collection of Penalties. It is OSHA policy to collect penalties owed the government as a result of the legitimate exercise of statutory authority. The Area Director shall be guided by the following with regard to penalty collection:
 - a. Time Allowed for Payment of Penalties. The date when penalties become due and payable depends on whether or not the employer contests.
 - (1) Uncontested Penalties. When citations and/or proposed penalties are uncontested, the penalties are due and payable 15 working days following the employer's receipt of the Citation and Notification of Penalty or, in the case of Informal Settlement Agreements, the execution of the agreement unless otherwise agreed upon in the settlement. (See Chapter V, H.2.)
 - (2) Contested Penalties. When citations and/or proposed penalties are contested, the penalties are due and payable 60 calendar days after the issuance of a final order by the Review Commission. If

the Commission order is appealed to a Court of Appeals, the penalties are due and payable 90 calendar days after the issuance of the court's judgment, provided that further review by the Supreme Court has not been sought.

- (3) Partially Contested Penalties. When only part of a citation and/or a proposed penalty is contested, the due date for payment as expressed in D.2.a.(1) will be used for the uncontested items and the due date expressed in D.2.a.(2) for the contested items.

NOTE: D.2.a.(3) notwithstanding, for collection purposes, partially contested cases are to be treated as contested cases.

- b. Methods of Payment. Employers assessed penalties shall remit the total payment to the Area Office by certified check, personal check, company check, postal money order, bank draft or bank money order, payable to the U.S. Department of Labor-OSHA. Payment in cash shall not be accepted. Upon request of the employer and for good cause, alternate methods of payment are permissible, such as payments in installments.
- c. Identifying Payment. The Reporting I.D. of the Area Office concerned along with the Inspection Number shall be placed in the upper left corner of the payment instrument. The date of receipt shall be stamped in the upper right corner.
- d. Adjustments to Payments. The following adjustments shall be made prior to transmitting the payment instrument to the Lockbox Depository (See D.3.c.):
- (1) If the payment instrument is not dated, the date received shall be entered as the date of payment.
 - (2) If the payment instrument has differing numeric and written amounts, the written amount shall be credited and the instrument deposited. If the written amount is obviously incorrect or differs from the amount referenced in the accompanying correspondence, the payment instrument shall be returned to the employer via certified mail.
 - (3) If the payment instrument does not include the establishment name, the name shall be inserted on the face of the payment instrument.
 - (4) If the payment instrument includes the notation, "Payment in Full," and the notation is correct, the payment shall be deposited; if not,

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the payment instrument shall be returned to the employer via certified mail.

- (5) If an employer erroneously makes the payment payable to an official of OSHA by name, it shall be endorsed as follows:
- (a) Postal Money Orders. Follow instructions on reverse of the money order.
 - (b) All Others. Enter on reverse:

Pay to the order of the U.S. Department of Labor - OSHA

(Signature)

(Typewritten name of payee)

3. Handling Monies Received. Monies received in payment of penalties shall be recorded immediately upon receipt and handled according to the following:
- a. Incorrect, Unhonored or Foreign Payments. Current instructions for handling such payments shall be adhered to.
 - (1) Incorrect payments shall be returned to the employer via certified mail.
 - (a) Unsigned payments shall be returned to the employer.
 - (b) Incorrectly dated payments shall be handled as follows:
 - 1 If payment instrument is dated 10 days or more after the date of receipt, it is to be returned to the employer.
 - 2 If the payment instrument is dated less than 10 but more than 3 days after the date of receipt, it is to be held for deposit on the day it is dated.
 - 3 Payment instruments dated 3 or fewer days after the date of receipt are to be deposited on the day received.
 - (2) Instruments of payments which have been sent to the Division of Financial Management (FINOSH) without payment due to insufficient funds shall be forwarded to the Area Office for return to the employer via certified mail.

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- (3) Payments drawn on foreign banks shall be sent directly to FINOSH without using the "Lockbox" procedures described in D.3.c. at the following address:

FINOSH
U.S. Department of Labor - OSHA
Post Office Box 2422
Washington, D.C. 20013

- b. Endorsing Payments. All payment instruments shall be endorsed as follows:

16-01-2012
Payment FRB or BR Credit
Treasury U.S, Payment on an
Obligation to U.S. and must be
paid at Par DO NOT WIRE NON
PAYMENT

U.S. DEPT. OF LABOR
Occupational Safety and Health Administration
DOL OSHA Washington DC

- c. Depositing Payments. All payments shall be kept in a safe place and, unless otherwise indicated, transmitted daily in accordance with current IMIS procedures to the Lockbox Depository at the following address:

U.S. Department of Labor - OSHA
Post Office Box 845734
Dallas, TX 75284-5734

- d. Records. A copy of the penalty payment instrument shall be included in the case file. Additional accounting records shall also be included in the case file in accordance with current procedures.
4. Returning Penalty Payments. In cases of later penalty modifications by OSHA or by the Commission or a court, refunds to the employer shall be made by FINOSH. The Area Director shall notify IMIS and FINOSH in accordance with current instructions.
5. Uncollectable Penalties. There may be cases where it will be apparent that a penalty cannot be collected no matter what action is undertaken. Examples might be a penalty against a company which is no longer in business and has no successor. In such cases the Area Director shall write off the unpaid penalty, no matter what the outstanding amount. The data base shall be updated following current IMIS procedures. In bankruptcy cases the Area Director shall seek the

advice of the Regional Solicitor as to whether to file as a creditor under the Bankruptcy Act.

E. Delinquent Penalties.

1. Additional Charges. The Debt Collection Act of 1982 (the Act) provides for the assessment of interest and additional charges for nonpayment and administrative costs with respect to delinquent debts arising under the OSHA program.
 - a. Policy. Under the regulations of the Department of Labor implementing the Act, penalties assessed by OSHA are considered as debts. It is OSHA policy to exercise the authority provided under the Act to assess additional charges on delinquent debts.
 - b. Notification Procedures. It is OSHA policy to notify employers (the "Notice") that debts are valid and overdue and to inform them of OSHA's debt collection procedures including the interest, additional charge for nonpayment and administrative cost provisions of the Act prior to assessing any applicable delinquent charges. Area Directors shall notify employers in accordance with the following procedures:
 - (1) Citations with Proposed Penalties. A copy of the "Notice" stating OSHA's debt collection policy including assessment of interest, additional charges for nonpayment and administrative costs shall be included with each Citation and Notification of Proposed Penalty, OSHA-2 Form, sent to employers.

NOTE: Interest rates are published annually and may be revised quarterly by the Secretary of Treasury. FINOSH shall advise Area Directors of any changes in the interest rate as they occur.
 - (2) Contested Cases with Penalties. Area Directors shall mail the "Notice" to employers as soon as practicable after a decision has been rendered by the Review Commission if one has not already been sent with the initial citation. If payment of any applicable penalty is not received within 2 calendar months after the date of the final order of the Review Commission or 3 calendar months after the date of the judgment of a U.S. Court of Appeals and no appeal of the case has been filed by either OSHA or the employer, the Area Director shall mail the first demand letter to the employer, certified, return receipt requested.
 - c. Notification of Overdue Debt. A notification letter (first demand letter) shall be mailed (certified, return receipt requested) to the employer upon

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verification that a valid and overdue debt exists except in the following circumstances:

- (1) The employer is currently making payments under an approved installment plan or other satisfactory payment arrangement. Such plan or arrangement shall be set forth in writing and signed by the employer and the Area Director.

NOTE: If the employer enters into a written plan establishing a repayment schedule within one calendar month of the due date but subsequently fails to make a payment within one calendar month of its scheduled due date, a payment default letter shall be sent to the employer. If the employer fails to respond satisfactorily to that letter within one month, the unpaid portion of the debt shall be handled in accordance with E.1.e.

- (2) The employer has partially contested the case (even if the penalty has not been contested). In such circumstances the first demand letter shall not be sent until a final order has been issued.
- (3) A copy of the "Notice" and the first demand letter shall be retained in the case file.

d. Assessment of Additional Charges. The Act and DoL regulations require that debtors be assessed:

- (1) Interest. Interest on the unpaid principal amount shall be assessed on a monthly basis at the current annual rate if the debt has not been paid within one calendar month of the date on which the debt (penalty) became due and payable (i.e., the date of final order). Interest is not assessed if an acceptable repayment schedule has been established in a written plan by the due date.

NOTE: Interest and delinquent charges are not compounded; only the unpaid balance of the penalty amount is used to calculate these additional charges.

- (2) Delinquent Charges. Delinquent charges shall be assessed on a monthly basis if the debt has not been paid within 3 calendar months of the delinquent date (which is one calendar month after the due date). Debts paid in full within 3 calendar months of the delinquent date shall not be assessed a delinquent charge. Delinquent charges accrue at the annual rate of 6 per cent (0.5 per cent per month).

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NOTE: Although the delinquent charge is not assessed for the first time until 3 calendar months after the debt became delinquent (4 calendar months after the due date), it is, nevertheless, calculated from the delinquent date. Thus the first assessment of a delinquent charge will amount to a 3-month charge or 1.5 percent of the outstanding principal amount. Each month after that, the additional delinquent charge will be 0.5 percent of the unpaid principal.

- (3) Administrative Costs. Administrative costs shall be assessed for demand letters sent in an attempt to collect the unpaid debt. Currently the cost is 12 dollars per demand letter.

e. Assessment Procedures. If the penalty has not been paid by the delinquent date (i.e., within one calendar month of the due date), the Area Director shall implement the following procedures:

- (1) Interest shall be assessed at the current interest rate on the unpaid balance of the debt. The rate of interest shall remain fixed for the duration of the debt.

NOTE: Interest is to be calculated for one month and shall be assessed on the date on which such charges become payable. Any later additional charges will not be assessed until the first of the month following the date on which the charge becomes payable. Thus, if interest becomes payable on the twentieth of the month and the first demand letter is not sent out until the eighth of the following month, only one month's interest is assessed.

- (2) The first demand letter shall be sent to the employer calling for immediate payment of the debt. The demand letter shall show the total amount of the debt, including the unpaid penalty amount, interest and administrative costs.
- (3) If, for any valid reason, the first demand letter is not deliverable and the forwarding address of the employer is not known, the debt shall be written off.
- (4) The employer may respond to the first demand letter in several ways:
- (a) The entire debt may be paid; in this case no further collection action is necessary.

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- (b) A repayment plan may be submitted or offered; after a written repayment schedule has been approved by the Area Director, no additional charges shall be levied against the debt as long as payments are made in accordance with the approved schedule. (See note under E.1.c.(1).) If payments are not met on schedule, the unpaid portion of the debt shall be treated in accordance with E.1.e.(5).
 - (c) A partial payment may be made; the unpaid portion of the debt shall be treated in accordance with E.1.e.(5).
- (5) If any portion of the debt remains unpaid after one calendar month from the time the first demand letter was sent to the employer, the Area Director shall not send any additional demand letters; instead the case shall either be written off or referred to the National Office for collection.
- (a) Outstanding debts with a current penalty amount (without additional charges) of less than \$1,000 shall be written off.
 - (b) Outstanding debts with a current penalty amount of \$1,000 or more shall be referred to the Office of Management Data Systems (OMDS).
 - (c) The data base shall be updated in either case following IMIS procedures.
- (6) After a case has been referred to OMDS for collection, the Area Director has no further responsibilities with regard to penalty collection related to that case unless it later comes back for referral to the Regional Solicitor for legal action.
- (7) If the employer mistakenly sends the payment to the Area Office after the case has been referred to the National Office, the Area Director shall telephone OMDS immediately and forward all such payments at the end of each workday to the following address:
- U.S. Department of Labor - OSHA
Office of Management Data Systems
Delinquent Accounts Collection
Post Office Box 2422
Washington, D.C. 20013
- (8) OMDS shall update the host data base to reflect all penalty collection actions taken by the National Office. A monthly report