



## MANUFACTURERS' ASSOCIATION OF SOUTH CENTRAL PENNSYLVANIA

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**Beware**.....of multiple violations when undergoing an OSHA audit.

On 3/1/6/10, sharing his views on the issue of enhanced penalties, David Michaels Assistant Secretary for OSHA is [quoted](#) ***“Safe jobs exist only when employers have adequate incentives to comply with OSHA's requirements. Those incentives are affected, in turn, by both the magnitude and the likelihood of penalties. Swift, certain and meaningful penalties provide an important incentive to “do the right thing.”***

Then, in a subsequent [news release](#) dated April 22, 2010, Assistant Secretary of Labor for OSHA Dr. David Michaels said, "for many employers, investing in job safety happens only when they have adequate incentives to comply with OSHA's requirements. Higher penalties and more aggressive, targeted enforcement will provide a greater deterrent and further encourage these employers to furnish safe and healthy workplaces for their employees." Dr. Michaels then announced that the average penalty for a serious violation will increase from about \$1,000 to an average \$3,000 to \$4,000.

Again, on 10/5/11, David Michaels is [quoted](#) ***“While OSHA is working within the parameters set in existing law, the Administration continues to support the Protecting America's Workers Act in order to give OSHA the tools to impose appropriate penalties to increase deterrence and save lives. OSHA must be empowered to send a stronger message in the most egregious cases.”***

Although Congress has not taken action on any legislation ***to increase penalties for high gravity violations*** the Assistant Secretary for OSHA, David Michaels, appears to be aggressively moving the agency forward with his ***“hit-them-in-the-pocketbook”*** philosophy by increasing the magnitude of penalties by citing multiple violations, which thereby increases the total amount of fines to employers.

### [OSHA's 2010 Annual Enforcement Summary Report Shows](#)

#### **Hazards Identified: Total Violations Increase**

In FY 2010, OSHA found 96,742 violations of OSHA's standards and regulations in the nation's workplaces, a 15.3% increase since FY 2006. The total number of serious and repeat violations issued increased by 22.1% and 8.1%, respectively, over the past five years.

The total number of willful violations issued significantly increased 278.8% from FY 2009 to FY 2010.

These numbers demonstrate that OSHA is seeking out and identifying more serious and willful hazards in the workplace

OSHA Violation Statistics	FY2006	FY2007	FY2008	FY2009	FY2010	%Change 2009-2010
<b>Total Violations</b>	83,913	88,846	87,687	87,663	96,742	10.4%
<b>Total Serious Violations</b>	61,337	67,176	67,052	67,668	74,885	10.7%
<b>Total Willful Violations</b>	479	415	517	401	<b>1,519</b>	278.8%
<b>Total Repeat Violations</b>	2,551	2,714	2,817	2,762	2,758	-.14%
<b>Total Other-than-Serious</b>	19,246	18,331	17,131	16,615	17,244	3.7%

OSHA citations inform the employer and employees of the regulations and standards alleged to have been violated, and of the proposed length of time set to correct alleged hazards. The employer receives citations and notices of proposed penalties by certified mail. The employer must post a copy of each citation at or near the place a violation occurred for 3 days or until the violation is abated, whichever is longer.

Recent OSHA proposed fines, based on 123 total violations, to seven (7) manufacturers totals nearly \$2 million (see OSHA citation summaries below)

27 violations	Dallas, Dough Products
24 violations	Sen-Dure Products Inc
8 violations	Georgia Chrome Products
13 violations	USUI International Corp
22 violations	Birdhouse Painters Land
6 violations	Cooperative Producers Inc
23 violations	All-Feed Processing & Packaging Inc
123 Total violations	

1) **Oct. 28, 2011 - Dallas, Dough Products Facility Cited for 27 Violations**

Anaheim, Calif-based Bridgford Foods Corp. was cited for **27** safety and health violations at its frozen bread dough **production** facility in Dallas, Texas, by the Occupational Safety and Health Administration. The agency proposed \$422,600 in fines for the violations, which ranged from failing to establish a hearing conservation program to making sure that machines had proper guarding to prevent workers from coming into contact with moving parts. The company has been placed in OSHA's Severe Violator Enforcement Program.

[Read the News Release](#)

2) **Oct. 31, 2011 - Florida Manufacturing Company Cited for 24 Safety, Health Hazards**

An inspection of Sen-Dure Products Inc. in Ft. Lauderdale, Fla., conducted by the Occupational Safety and Health Administration has resulted in citations for **24** safety and health violations with proposed penalties of \$68,600. The **manufacturer** of industrial radiators and heat exchangers failed to eliminate amputation, fall and electrical hazards. It also exposed workers to hexavalent chromium, lead and loud noises. OSHA initiated its inspection as part of the agency's site-specific targeting program for companies in high-hazard industries.

[Read the News Release](#)

3) **Oct. 31, 2011 - Georgia Chrome Products Preparer Re-Inspected, Fined \$110,000**

A re-inspection by the Occupational Safety and Health Administration of Milac **Manufacturing Inc.**, a chrome products preparer in Moultrie, Ga., resulted in citations for eight (8) safety violations with total proposed penalties of \$110,220. OSHA conducted a follow-up inspection after the company failed to confirm that violations cited in 2010 had been corrected.

[Read the News Release](#)

4) **Oct. 31, 2011 - Ohio Company Cited Again for Training Failures**

USUI International Corp., an automotive parts supplier that **manufactures** fuel line metal tubing and plastic fan blades for machinery, has been cited by the Occupational Safety and Health Administration for **13** safety and health violations. Two repeat violations, previously cited in May and June 2010, involve failing to enforce and train workers in "lockout/tagout" procedures to prevent equipment from starting up during maintenance. The Monroe, Ohio, company faces proposed fines of \$90,600.

[Read the News Release](#)

5) **Nov. 1, 2011 - Birdhouse Painters Land in OSHA Doghouse**

The Occupational Safety and Health Administration has cited Gardner Equipment Co. for safety and health violations at its Columbus and Juneau, Wis., facilities, including one willful violation for failing to ensure that workers used personal protective equipment while painting metal birdhouses at the Columbus facility. OSHA has proposed \$125,900 in fines for a total of **22** violations found at the two locations.

[Read the News Release](#)

6) **Nov. 2, 2011 - Nebraska Grain Handler Cited for Endangering Workers**

The Occupational Safety and Health Administration has cited Cooperative Producers Inc., a grain elevator facility in Franklin, Neb., for six (6) safety violations involving a variety of hazards. OSHA initiated its inspection under a local emphasis program targeting grain handling establishments. Proposed penalties total \$126,500.

[Read the News Release](#)

7) **Nov. 2, 2011 - Pet Food Co. Hit with More Than \$750,000 for Health, Safety Violations**

The Occupational Safety and Health Administration has cited All-Feed Processing & Packaging Inc., headquartered in Alpha, Ill., for **23** safety and health violations at its pet food production and packaging facility in Galva. The infractions included willful violations of OSHA's air contaminant, respiratory protection and hearing conservation standards. Some violations were cited under OSHA's "general duty" clause, including failing to provide appropriate fire and explosion protection in locations where concentrations of combustible dust existed. Proposed fines total \$758,450.

[Read the News Release](#)

The OSHA penalty calculation system should be of interest to employers. When OSHA discovers a violation, it initially cites the employer with a penalty that could be decreased if the employer meets certain criteria. These criteria can have a large impact on the amount of the penalty.

In the past, OSHA generally (with some notable exceptions) reduced penalties based on the following criteria:

1. History Reduction. Employers who had not been cited by OSHA for any serious, willful or repeated violations within the past three years receive a reduction of 10%.
2. Good Faith. An employer who has shown "good faith" could receive a penalty reduction of up to 25%. There are a number of factors that go into the determination of whether an employer has shown good faith.
3. Size Reduction. OSHA used to decrease its penalty by 60% for employers with 1 – 25 employees; by 40% for employers with between 26 – 100 employees; by 20% for employers with 101 – 250 employees; and no reduction was allowed for businesses with more than 250 employees.

As of October 1, 2010, OSHA made a number of changes to the above penalty adjustment factors, and they made various changes to the way that penalties are calculated.

The following is a list of the 9 changes that are taken [directly from OSHA's website](#):

**OSHA Administrative Penalty Information Bulletin**

OSHA is implementing several changes to its administrative penalty calculation system. Many of the agency's current penalty adjustment factors have been in place since the early 1970's, resulting in penalties which are often too low to have an adequate deterrent effect. Administrative penalty adjustments will therefore be made to several factors which impact the final penalty issued to employers. These factors include:

1. History Reduction
2. History Increase
3. Repeat Violations
4. Severe Violator Enforcement Program
5. Gravity-Based Penalty
6. Size Reduction
7. Good Faith
8. Minimum Penalties
9. Additional Administrative Modifications to the Penalty Calculation Policy

A brief description of each penalty adjustment factor and planned changes are provided below:

1. **History Reduction**

The time frame for considering an employer's history of violations will expand from three years to five. An employer who has been inspected by OSHA within the previous five years and has not been issued any serious, willful, repeat, or failure-to-abate citations will receive a 10 percent reduction for history.

2. **History Increase**

An employer that has been cited by OSHA for any high gravity serious, willful, repeat, or failure-to-abate violation within the previous five years will receive a 10 percent increase in their penalty, up to the statutory maximum. Employers who have not been inspected and those who have received citations for serious violations that were not high gravity will receive neither a reduction nor an increase for history.

3. **Repeat Violations**

The time period for considering the classification of repeated violations will be increased from three to five years.

4. **Severe Violator Enforcement Program**

Where circumstances warrant, at the discretion of the Area Director, high gravity serious violations related to standards and hazards identified in the SVEP will not normally be grouped or combined, and may be cited as separate violations, with individual proposed penalties.

5. **Gravity-Based Penalty (GBP)**

The gravity of a violation is the primary consideration in calculating penalties and is established by assessing the severity of the injury/illness which could result from a hazard and the probability that an injury or illness could occur. OSHA is adopting a gravity-based penalty structure for serious citations which will range from \$3,000 to \$7,000.

6. **Size Reduction**

OSHA will be amending its penalty reduction structure based on the size of employers, allowing for a penalty reduction between 10 and 40 percent for those with less than 250 employees. No size reduction will be applied for employers with 251 or more employees.

7. **Good Faith**

The current good faith procedures in the Field Operations Manual will be retained. A penalty reduction is permitted in recognition of an employer's effort to implement an effective workplace safety and health program. Employers must have a safety and health program in place to get any good faith reduction. Good faith reductions are not allowed in the cases of high gravity serious, willful, repeat, or failure-to-abate violations.

The 15% Quick-Fix reduction, which is currently allowed as an abatement incentive program to encourage employers to immediately abate hazards identified during inspections, remains unchanged. However, the 10% reduction for employers with a strategic partnership agreement will be eliminated.

8. **Minimum Penalties**

The minimum proposed penalty for a serious violation will be increased to \$500. When the proposed penalty for a serious violation would amount to less than \$500, a \$500 penalty will be proposed for that violation. The proposed minimum penalty for a posting violation will increase to \$250 if the company was previously provided a poster by OSHA.

9. **Additional Administrative Modifications to the Penalty Calculation Policy**

Final penalties will be calculated serially, unlike the current practice where all penalty reductions are added and the total percentage of reductions is then multiplied by the gravity-based penalty to arrive at the proposed penalty. All penalty adjustment factors will be applied serially.

These changes will establish general agency policy and do not preclude the agency from assessing a different penalty, where appropriate under the Act, in light of all circumstances in a particular case.

# OSHA FEDERAL PENALTY SCHEDULE

OSHA citations inform the employer and employees of the regulations and standards alleged to have been violated, and of the proposed length of time set to correct alleged hazards. The employer receives citations and notices of proposed penalties by certified mail. The employer must post a copy of each citation at or near the place a violation occurred for 3 days or until the violation is abated, whichever is longer.

These are the types of violations that may be cited and the penalties that may be proposed:

Other-Than-Serious Violation	Minimum: \$0 Maximum: \$1,000
Serious Violation	Minimum: \$1,500 Maximum: \$7,000
Willful Violation	Minimum: \$5,000 Maximum: \$70,000
Willful Violation (results in death)	Individuals: \$250,000 + 6 months jail Corporation: \$500,000 + 6 months jail
Willful Violation – Egregious Multiplier	Willful penalties are applied on a violation-by violation basis or employee by employee exposure.
Repeat Violation	Maximum: \$70,000
Failure-to-Abate	Up to \$7,000 a day for each day violation continues beyond abatement date
Falsifying records or making false statements	\$10,000 fine or up to 6 months jail or both
Violating Posting Requirements (failure to post OSHA poster, OSHA 300 Annual summary, citations, etc)	Maximum: \$7,000
Failure to report fatality/catastrophic event within 8 Hours	Minimum: \$5,000
Providing advance notice of inspection	\$1,000 fine or up to 6 months jail or both

- **Other-Than-Serious Violation** — A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. OSHA may assess a penalty from \$0 to \$1,000 for each violation. The agency may adjust a penalty for an Other-Than-Serious violation downward by as much as 95 percent, depending on the employer's good faith (demonstrated efforts to comply with the Act), history of previous violations, and size of business.
- **Serious Violation** -- A violation where there is a substantial probability that death or serious physical harm could result. OSHA assesses the penalty for a serious violation from \$1,500 to \$7,000 depending on the gravity of the violation. OSHA may adjust a penalty for a serious violation downward based on the employer's good faith, history of previous violations, and size of business.
- **Willful Violation** -- A violation that the employer intentionally and knowingly commits. The employer is aware that a hazardous condition exists, knows that the condition violates a standard or other obligation of the Act, and makes no reasonable effort to eliminate it. OSHA may propose penalties of up to \$70,000 for each willful violation. The minimum willful penalty is \$5,000. When a willful violation is deemed to be 'egregious' than OSHA can apply willful violation limits for every violation found or for every employee exposed to hazards.
- An employer and responsible management individuals convicted in a criminal proceeding of a willful violation of a standard that has resulted in the death of an employee may be fined up to \$250,000 for individuals or \$500,000 for a corporation or imprisoned up to 6 months, or both. A second conviction doubles the possible term of imprisonment.
- **Repeated Violation** -- A violation of any standard, regulation, rule, or order where, on reinspection, a substantially similar violation is found and the original citation has become a final order. Violations can bring a fine or up to \$70,000 for each such violation within the previous 3 years. To calculate repeated violations, OSHA adjusts the initial penalty for the size and then multiplies by a factor of 2, 5, or 10 depending on the size of the business.
- **Failure-to-Abate** -- Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day that the violation continues beyond the prescribed abatement date.

*Source: OSHA Publication 3000-09R. 2003.*