

CHAPTER VI

PENALTIES

- A. General Policy. OSHA has always asserted the position that the penalty structure implemented under federal statute was not designed as a punishment for violations nor as a source of income. However, the organization has held the state to a standard that citations and penalties should be issued regardless of any public policy goals. Accordingly, it is essential the procedures contained in this chapter be followed to assure the public interest in the state of New Mexico is protected.
- 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 repeat 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 the violation continues beyond the final abatement date.
 2. Public Employers. The act provides that the state, a political subdivision, or any agency of either who have received a citation for a serious violation of the Act shall be assessed a civil penalty not to exceed one thousand dollars for each violation; provided that the civil penalty shall not be collected during the time permitted for correction of the violation and if the violation is corrected within such time as specified in the citation.
 3. Statutory Authority. Section 50-9-24 provides the Secretary with the statutory authority to assess civil penalties for violations of the Act.

- a. Section 50-9-24B 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 current OSHA Instruction CPL 2.51 for exceptions imposed by the Appropriations Act.)
 - b. Section 50-9-24D 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 50-9-24G provides that, when a violation of a posting requirement is cited, a civil penalty of up to \$7,000 shall be assessed.
4. 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 the 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.
5. Penalty Factors. Section 50-9-24H of the Act provides that penalties shall be assessed on the basis of four factors:
- (1) The gravity of the violation,
 - (2) The size of the business,
 - (3) The good faith of the employer, and
 - (4) The employer's history of previous violations.
6. 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.
- a. To determine the gravity of a violation the

following two factors shall be considered:

- (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 the gravity-based penalty shall be reduced.
7. 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 which could result from the violation. This classification constitutes the first step in determining the gravity of the violation. The most serious type of injury or illness which is reasonably predictable as a result of the type of accident or health hazard exposure shall be assigned a severity factor in accordance with the following"
- 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. High 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.
8. Probability Assessment. The probability that an injury or illness may occur as a result of the condition or exposure shall be estimated in accordance with the provisions of this section.
- a. Categorization. Once it has been determined there is a substantial probability that an injury or

illness may occur as a result of an exposure to violative conditions, that probability shall be categorized as **greater** or **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.

when b. Safety Violations. The following circumstances shall normally be considered (and documented in the case file) 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, to continuous daily exposure.
- (3) Employee proximity to the hazardous conditions likely to lead to an accident, anywhere from the fringe of danger zone 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 when violations likely to result in illness are involved:

- (1) Number of workers exposed to the hazardous condition, both at the same time and sequentially.
- (2) Duration of employee overexposure to hazardous levels of contaminants or other illness-producing conditions, ranging from relatively short exposures to 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 or 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 the hazard will produce an injury or illness and they shall also be considered:
- (a) Mitigating circumstances, such a 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 judgement of the CO 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 affect the penalty excessively.

(2) When strict adherence to the probability assessment procedures would result in an unreasonably high or low gravity the SO shall use professional judgement to adjust the probability appropriately. Such decisions shall be adequately documented in the case file.

9. 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 is determined based on an appropriate and balanced professional judgement 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 (high)	\$5,000
Medium	Greater (mod)	\$3,500
Low	Greater (mod)	\$2,500
High	Lesser (mod)	\$2,500
Medium	Lesser (mod)	\$2,000
Low	Lesser (low)	\$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 death or extremely serious injury or illness. If the Bureau Chief determines it is appropriate, an GBP of up to \$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 violations, there is no severity assessment.
 - (1) Other-than-serious violations judged to be of greater probability shall be assigned a GBP of \$1,000 to which appropriate adjustment factors shall be applied.
 - (2) Other-than-serious safety and health violations judged to be of lesser or minimal probability shall not be cited with a penalty.
 - (3) The Bureau Chief may authorize a penalty up to \$7,000 for an other-than-serious violation when it is determined to be appropriate. The reason for such determination shall be documented in the case file.

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

- f. Penalties to be proposed for regulatory violations are discussed in section B.16 of this chapter.
- g. A GBP may be assigned without using the severity and probability assessment procedures when, with the agreement of the Bureau Chief, the use of such procedure is not appropriate.

10. 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 probability factors for combined violations shall be based on this 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 has 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.

- (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 calculation of the probability assessment of the grouped violation.

(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. The penalty shall be entered in the penalty column of the OHSB-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 shall apply.
- d. In egregious cases an additional factor of up to the number of violation instances may be applied. 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 Bureau Chief.

11. Penalty Adjustment Factors. The GBP may be reduced by as much as 95 percent depending upon the employer's "good faith," "size of business," and "history of previous violations." Up to 60-percent reduction is permitted for size, 25-percent 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. This shall be done after the classification and probability ratings have been determined for each violation and the general character of the employer's performance is assessed.
- 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 classified as repeated shall be adjusted only for size.
- d. Penalties assess for violations classified as willful shall be 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 workplaces 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 inspection 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
251 or more

20
none

- (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) When a small business has one or more serious violations of high gravity or a significant number of moderate probability which indicates a notable lack of concern for employee safety and health, the Compliance Officer 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. In exceptional cases, the compliance officer may recommend the full 25% for a smaller employer(1-25 employees) who has implemented an effective safety and health program, but has not reduced it to writing 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.
 - 2 Includes all programs required under standards and regulations applicable to the work place (e.g., hazard communication, lockout/tagout, hazardous materials and emergency response, etc.)
 - (b) A reduction of 15 percent shall normally be given if the employer has a documented and effective safety and health program, which has more than incidental deficiencies.
 - (c) No reduction shall be given to an

employer who has no health and safety program or where a willful violation is found.

- (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 of the adjustment factors.

12. 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 CO, the employer 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.

13. 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 CO, the employer immediately corrects or initiates steps to correct the hazard.

14. Failure to Abate. A Notification of Failure to Abate Alleged Violation (OHSB-2B) shall be issued in cases where violations have not been corrected as required.

- a. Failure to abate penalties shall be applied when an employer has not corrected a previously cited violation which has become a final order of the Commission.
- b. Employer Contest. If the 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 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 this chapter.

- (1) In those instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the Compliance Manager. In no case shall the penalty be less than \$1,000 per day.
- (2) Only adjustment factor for size--based on the circumstances noted during the reinspection--shall 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 continued unabated.
 - (a) The number of days unabated will 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 Bureau Chief, the case

shall be treated under the violation-by-violation penalty procedures established in the Departments response to OSHA Instruction CPL 2.80.

- (4) In unusual circumstances, such as where the gravity of the violation is especially high or the employer has willfully failed to abate the violation or in the event of a second failure to abate, higher penalties shall be proposed. In such instances, the proposed penalty shall be approved by the Bureau Chief.

d. Partial Abatement. When a citation has been partially abated, the Bureau Chief may authorize a reduction of 25 percent to 75 percent to the total amount of the proposed penalty once it has been calculated in accordance with the provisions of this chapter.

- (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. For example, where 3 out of 5 instances have been corrected, the daily proposed penalty may be reduced by 60 percent.

- (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. On rare occasions, when the Compliance Manager 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 reduced accordingly.

e. Good Faith Effort to Abate. When the CO believes that the employer has made good faith efforts to correct the violation and had good reason to believe that it was fully abated, the Compliance Manager may reduce or eliminate the daily proposed penalty that would otherwise be justified.

15. Repeated Violations. The act provides that, for a repeated violation of the Act, an employer may be

assessed a civil penalty of not more than \$70,000 for each violation.

- a. Gravity and 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 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 Bureau Chief determines it is appropriate, 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 \$1000 for a third repetition.
16. Willful Violations. The Act provides that, for a Willful violation of the Act, an employer 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.
 - (1) Serious Violations. For willful serious violations, a gravity of high, medium, or low shall be assigned based on the GBP of the underlying serious violation, as described at B.9.b. of chapter VI.
 - (a) The adjustment factor for size shall be applied at one-half of the value stated

at B.11.e.(1).

(b) The adjustment factor for history shall be applied as described at B.11.e (3). There shall be no adjustment for good faith.

determined (c) The proposed penalty shall then be from the table below:

Penalties to be proposed

Total percentage reduction for size and/or history	0%	10%	20%	30%	40%
High Gravity	\$70,000	\$63,000	\$56,000	\$49,000	\$42,000
Moderate Gravity	\$55,000	\$49,500	\$44,000	\$38,500	\$33,000
Low Gravity	\$40,000	\$36,000	\$32,000	\$28,000	\$25,000

(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 that are determined to be willful, The adjusted initial penalty shall be multiplied by 10. In no event shall the penalty, after adjustment for size, be less than \$5,000.

17. Violation of OHSR 101 and 102. Except as provided in the Congressional Appropriations Act, 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.

a. General Application. The procedures that follow

shall be used in determining proposed penalties for violations of OHSR 101 regulatory requirements only when the employer has received a copy of the "Recordkeeping Requirements" booklet or had knowledge of the requirements.

- (1) If the employer has not received the booklet and did not have knowledge, citations without proposed penalties will be issued.
- (2) All 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) OHSB Notice. If the employer has not displayed (posted) the notice furnished by the Occupational Health and Safety Bureau as prescribed in OHSR 102, an other-than-serious citation shall normally be issued. The unadjusted penalty for this alleged violation shall be \$1,000 provided that the employer has received a copy of the poster or had knowledge of the requirement.
- (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 OHSR 101, an other-than-serious citation shall be issued with an unadjusted penalty of \$1,000.
- (3) Citation. If an employer received a citation which has not been posted as prescribed in OHSR 106.16, an other-than-serious citation shall normally be issued. The unadjusted penalty shall be \$3,000.

c. Reporting and Recordkeeping Requirements. Section 50-9-24G 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 OHSR 101, an other-than-serious citation shall be

issued. There shall be an unadjusted penalty of \$1,000 for each OSHA form not maintained, for each of the preceding three years. When no recordable injuries and illnesses have occurred, these forms will be considered as being maintained, as long as at the end of each calendar year there is certification of the summary.

- (2) Reporting. Employers are required to report either orally or in writing to the OHSB within 8 hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the hospitalization of three or more employees. An other-than-serious citation shall be issued for failure to report such an occurrence. The unadjusted penalty shall be \$5,000.

- d. Grouping. Violations of the posting and recordkeeping requirements which involve the same document (e.g., summary portion of the 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) If the employer fails upon request to provide records required in 29 CFR 1910.20 for inspection and copying by any employee, former employee, or authorized representative of employees, a citation for violation of OHSR 101 shall normally be issued. The unadjusted penalty shall be \$1,000 for each form not made available. Thus, if the OSHA-200 for the 3 preceding years is not made available, the unadjusted penalty would be \$3,000. If the employer is to be cited for failure to maintain these records, no citation under this provision of OHSR 101 shall be issued.

- (2) If the employer is cited for failing to provide records as required in 29 CFR 1910.20 for inspection and copying by an employee, or authorized representative of employees, an unadjusted penalty of \$1,000 may be proposed for each record. A maximum of \$7,000 may be assessed for such violations.

- f. Notification Requirements. When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by OHSR 106.6, an other-than-serious citation shall be issued with an unadjusted penalty of \$2,000.

C. Criminal Penalties.

1. The Act provides for criminal penalties in the following cases:
 - a. Willful violations causing death.
 - b. Giving unauthorized advance notice.
 - c. Giving false information.
2. Criminal penalties are imposed by the courts after trials and not by the Occupational Health and Safety Bureau or the Occupational Health and Safety Review Commission.

D. Handling Monies Received from Employers.

1. Responsibility of Compliance Manager. The Compliance Manager is responsible for informing employers of the OHSB's debt collection procedures, collecting assessed penalties from employers, reporting penalty amounts collected and those due, referring cases with uncollected penalties to the Legal Office, transferring selected cases to the Legal Office for legal action, and transferring collected monies in accordance with current Division procedures.
2. Collection of Penalties. It is OHSB policy to collect penalties owed the government as a result of the legitimate exercise of statutory authority. The Compliance Manager 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.
 - (2) Contested Penalties. When citations and/or proposed penalties are contested, the

penalties are due and payable upon final adjudication by the Review Commission.

- (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 by certified check, personal check, company check, postal money order, bank draft or bank money order, payable to the State of New Mexico. 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.

3. Handling Monies Received. Monies received in payment of penalties shall be recorded immediately upon receipt and handled according to the following:

- a. The check or money order should be remitted to the administrative services division by the end of the working day on which it was received.
- b. A copy of both faces of the check, and a receipt issued by the ED accounting section will be maintained in the case file.
- c. Cash payment shall not be accepted.
- d. 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 returned to the Division without payment due to insufficient funds shall be forwarded to the Legal Office.

(3) Payments drawn on foreign banks shall be sent directly to the Legal Office.

5. Uncollectible 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 Compliance Manager shall refer the matter to the Bureau Chief. The data shall be updated following current IMIS procedures.

E. Delinquent Penalties.

1. Notification Procedures. It is OHSB policy to notify employers that debts are valid and overdue and to request payment. The Compliance Manager shall notify employers in accordance with the following procedures:

(1) Expiration of 15 Working Day Period. When the specified time for penalty submission has elapsed, the Compliance Manager shall inform the employer, by certified mail, reviewing the facts and proposed penalty and inform the employer that payment is due within a specified time, normally 10 days.

(2) Expiration of 10 Day Remittance Period. If payment is not received by the close of business on the day following the end of the 10 day remittance period, the Compliance Manager shall refer the case to the Legal Office.

2. Contested Cases with Penalties. The legal office shall pursue collection of penalties as soon as practicable

after a decision has been rendered by the OHSRC.