AKOSH Program Directive #22-01

Date: January 18, 2022

To: All AKOSH Staff

From: William Harlan, Director

Subject: Amended 2022 FOM Penalties Supplement

This program directive, PD 22-01, is adopted as the 2022 FOM Penalties Supplement.

This program directive incorporates the annual adjustment to civil penalties for inflation.

This program directive is effective immediately. Please ensure that all members of your staff receive a copy of this program directive and understand how to implement it.

Attachment: 2022 FOM Penalties Supplement

cc: Patrick Kapust, Acting Regional Administrator, OSHA, Region X
    Abby Lopez, Assistant Regional Administrator, OSHA, Region X
Executive Summary

This document is a supplement to chapter 6 of the AKOSH Field Operations Manual, PD 21-02. The purpose of this document is to aid AKOSH personnel in proposing initial penalties for violations of Alaska’s occupational safety and health standards.

How to Use This Supplement

Chapter 6 of the AKOSH Field Operations Manual provides the policies for proposing penalties for violations. It contains references to the tables contained within this supplement. To use this manual, first identify the appropriate part of the supplement based on the violation date of a citation. The “penalties decision chart” is a helpful tool to identify the correct part. Turn to that part, and use the appropriate table as referenced in the Field Operations Manual.

PART 2: VIOLATIONS OCCURRING ON OR AFTER FEBRUARY 1, 2022 .................................................. 2
APPENDIX A .............................................................................................................................................................. 4
Part 2: Violations Occurring On or After February 1, 2022

This part shall be used to assess penalties for violations occurring on or after February 1, 2022.

Table S-1: Statutory Maximum and Minimum Penalties
Set by AS 18.60.095 and further defined under 8 AAC 61.140

<table>
<thead>
<tr>
<th>Violation Type</th>
<th>Maximum</th>
<th>Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Willful</td>
<td>$145,027</td>
<td>$10,360</td>
</tr>
<tr>
<td>Repeat</td>
<td>$145,027</td>
<td>$10,360* per violation</td>
</tr>
<tr>
<td>Serious</td>
<td>$14,502</td>
<td>$1,036 per violation</td>
</tr>
<tr>
<td>Other than serious</td>
<td>$14,502</td>
<td>$0 per violation</td>
</tr>
<tr>
<td>Failure to abate</td>
<td>$14,502 per day unabated beyond the abatement date**</td>
<td>N/A</td>
</tr>
<tr>
<td>Posting requirements</td>
<td>$14,502 per violation</td>
<td>$0</td>
</tr>
</tbody>
</table>

*Although not a statutory requirement, it is AKOSH policy that when a proposed penalty for a serious violation would amount to less than $1,036, a $1,036 penalty shall be proposed for that violation

**Generally limited to 30 days maximum

Table S-2: Violation Gravity Definitions

The gravity of a violation is defined by the gravity-based penalty (GBP):

- A high gravity violation is one with a GBP of $14,502
- A moderate gravity violation is one with a GBP ranging from $8,287 to $12,431
- A low gravity violation is one with a GBP of $6,215

Table S-3: GBP for Serious Violations
Severity + Probability = GBP

<table>
<thead>
<tr>
<th>Severity</th>
<th>Probability</th>
<th>GBP</th>
<th>Gravity</th>
<th>OIS Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Greater</td>
<td>$14,502</td>
<td>High</td>
<td>10</td>
</tr>
<tr>
<td>Medium</td>
<td>Greater</td>
<td>$12,431</td>
<td>Moderate</td>
<td>5</td>
</tr>
<tr>
<td>Low</td>
<td>Greater</td>
<td>$10,360</td>
<td>Moderate</td>
<td>5</td>
</tr>
<tr>
<td>High</td>
<td>Lesser</td>
<td>$10,360</td>
<td>Moderate</td>
<td>5</td>
</tr>
<tr>
<td>Medium</td>
<td>Lesser</td>
<td>$8,287</td>
<td>Moderate</td>
<td>5</td>
</tr>
<tr>
<td>Low</td>
<td>Lesser</td>
<td>$6,215</td>
<td>Low</td>
<td>1</td>
</tr>
</tbody>
</table>
Table S-4: GBP for Other-Than-Serious Violations

<table>
<thead>
<tr>
<th>Severity</th>
<th>Probability</th>
<th>GBP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimal</td>
<td>Greater</td>
<td>$1,163 - $14,502</td>
</tr>
<tr>
<td>Minimal</td>
<td>Lesser</td>
<td>$0</td>
</tr>
</tbody>
</table>

Table S-5: Repeat Other-Than-Serious, No Initial Penalty

For a repeated other-than-serious violation that otherwise would have no initial penalty, a GBP penalty shall be proposed as follows:

- $414 for the first repeated violation,
- $1,036 for the second repeated violation, and
- $2,072 for a third repetition.

Table S-6: Serious Willful Violations

<table>
<thead>
<tr>
<th>Total percent reduction for size and/or history</th>
<th>High Gravity</th>
<th>Moderate Gravity</th>
<th>Low Gravity</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>$145,027</td>
<td>$124,305</td>
<td>$103,594</td>
</tr>
<tr>
<td>5%</td>
<td>$137,775</td>
<td>$118,090</td>
<td>$101,600</td>
</tr>
<tr>
<td>10%</td>
<td>$130,523</td>
<td>$111,874</td>
<td>$93,234</td>
</tr>
<tr>
<td>15%</td>
<td>$123,273</td>
<td>$105,659</td>
<td>$88,053</td>
</tr>
<tr>
<td>20%</td>
<td>$116,021</td>
<td>$99,445</td>
<td>$82,875</td>
</tr>
<tr>
<td>25%</td>
<td>$108,770</td>
<td>$93,229</td>
<td>$77,695</td>
</tr>
<tr>
<td>30%</td>
<td>$101,518</td>
<td>$87,013</td>
<td>$72,517</td>
</tr>
<tr>
<td>40%</td>
<td>$87,016</td>
<td>$74,583</td>
<td>$62,157</td>
</tr>
<tr>
<td>50%</td>
<td>$72,514</td>
<td>$62,153</td>
<td>$51,797</td>
</tr>
<tr>
<td>60%</td>
<td>$58,011</td>
<td>$49,723</td>
<td>$41,437</td>
</tr>
<tr>
<td>70%</td>
<td>$43,507</td>
<td>$37,291</td>
<td>$31,078</td>
</tr>
<tr>
<td>80%</td>
<td>$29,006</td>
<td>$24,860</td>
<td>$20,718</td>
</tr>
<tr>
<td>90%</td>
<td>$14,502</td>
<td>$12,430</td>
<td>$10,360</td>
</tr>
</tbody>
</table>

Table S-7: Failure to Provide Access to Medical and Exposure Records

- A GBP of $2,072 shall normally be proposed for each record (i.e., either medical record or exposure record, on an individual employee basis).
- A maximum GBP of $14,502 may be proposed for such violations.
Appendix A

Purpose:
This appendix provides instructions for updating the AKOSH Penalties Supplement when maximum penalty adjustments occur.

Background:
Following the *Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*, federal OSHA began adjusting its maximum\(^1\) penalties according to the Consumer Price Index for All Urban Consumers (CPI-U). Alaska was required to follow suit, and Alaska’s initial penalty adjustment went into effect on October 20, 2018.

No later than January 15\(^{th}\) each year, the United States Department of Labor will publish a notice in the Federal Register with OSHA’s new maximum penalties for that year. Alaska follows suit by publishing the pamphlet, “*Alaska Occupational Safety and Health Civil Penalties*” which goes into effect on February 1\(^{st}\) of each year. The new amounts apply to penalties assessed on or after February 1\(^{st}\).

\(^1\) Where the term maximum is used, it also refers to the minimum penalty for willful violations.