

Plan for Assessing Penalties in Administrative Orders and Licensing Orders

**Minnesota Department of Labor and Industry
Construction Codes and Licensing Division**



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I. INTRODUCTION

The Commissioner of Labor and Industry has developed a plan for assessing penalties in administrative orders and licensing orders issued by the Department of Labor and Industry's Construction Codes and Licensing Division. The 2007 Minnesota Legislature granted the Department of Labor and Industry enforcement authority in the construction code and licensing areas, including the authority to assess penalties in administrative orders and licensing orders.¹ This law, codified as Minnesota Statutes § 326B.082, became effective December 1, 2007. The Minnesota Legislature amended Minnesota Statutes § 326B.082 in both 2008² and 2010³.

The Department sought the 2007 legislation in an effort to develop an enforcement system that would be consistent throughout the various construction code areas, and that would promote compliance and deterrence. Streamlined procedures, improved consistency and fairness for the regulated community, and increased enforcement efficiency were also objectives.

Two of the enforcement tools included in the statute allow the commissioner to assess penalties for violations of laws in the construction code and licensing areas: administrative orders and licensing orders. Minnesota Statutes § 326B.082, subdivision 7, authorizes the Commissioner to issue administrative orders. Administrative orders may be issued against any person whom the commissioner determines has committed a violation of law. Administrative orders may require the person to correct the violation, may require the person to cease and desist from committing the violation, and may include monetary penalties. Minnesota Statutes § 326B.082, subdivisions 11 and 12, authorize the Commissioner to issue licensing orders. Licensing orders may be issued against a permit, license, registration, or certificate holder whom the Commissioner determines has committed a violation of law. Licensing orders may deny, revoke, suspend, limit, place conditions on, or censure the permit, license, registration, or certificate holder, and may also include the assessment of monetary penalties. The penalty authority within the enforcement statute gives the Construction Codes and Licensing Division an administrative remedy to gain compliance with programs administered by the division.

IMPORTANT NOTE: This Plan is intended to be used as general guidance to assist agency staff in developing enforcement cases and determining penalty amounts. Each case has its own, often unique, factual background and context. As a case is evaluated, the penalty developed will be tailored to the case and may, at times, be different than this Plan outlines. The Minnesota Department of Labor and Industry reserves the right to act at variance with this Plan based upon applicable law and the relevant facts of a specific case. This Plan is not intended, and cannot be relied upon,

¹ 2007 Minn. Laws, Chap. 140, Art. 3, Sec. 2.

² 2008 Minn. Laws, Chap. 337, Sec. 47.

³ 2010 Minn. Laws, Chap. 183, Sec. 1.

to create any rights, substantive or procedural, that can be enforced in litigation or any administrative proceeding within the State of Minnesota.

A. Definitions

For purposes of this plan the following terms have the meaning given them.

“Commissioner” – means the Commissioner of the Minnesota Department of Labor and Industry or the Commissioner's designee.

“Department” - means the Minnesota Department of Labor and Industry.

“Division” – means the Construction Codes and Licensing Division (CCLD) of the Minnesota Department of Labor and Industry.

“Enforcement supervisor” – means the enforcement supervisor of the Construction Codes and Licensing Division within the Minnesota Department of Labor and Industry.

“Plan” – means this Plan for Assessing Penalties in Administrative Orders and Licensing Orders.

“License” – means any registration, permit, certification, or other form of approval authorized by Chapter 326B to be issued by the Commissioner as a condition of doing business or conducting a trade, profession, or occupation in the state of Minnesota.

“Licensing Order” - means an order issued by the Commissioner under Minnesota Statutes § 326B.082, subdivision 12(a), which denies, conditions, limits, censures, suspends, or revokes a person's permit, license, registration or certificate issued by the Department. A Licensing Order may include a monetary penalty pursuant to Minnesota Statute § 326B.12, subdivision 12(b).

“Administrative Order” – means an order issued by the Commissioner under Minnesota Statutes § 326B.082, subdivision 7(a), which requires any person who commits any violation of Chapter 326B, Minnesota Statutes §§ 327.31 to 327.36, or any applicable rules, orders, stipulations, settlements, or compliance agreements, to correct the violation, cease and desist from committing the violation, and/or pay a monetary penalty.

B. Programs to which the penalty authority applies.

The Commissioner may issue administrative orders and licensing orders in connection with enforcement of the “applicable law.”⁴ “Applicable law” is defined in chapter 326B as follows:

“Applicable law” means the provisions of sections 327.31 to 327.36 and this chapter, and all rules, orders, stipulation agreements, settlements, compliance agreements, licenses, registrations, certificates, and permits adopted, issued, or enforced by the department under sections 327.31 to 327.36 or this chapter.⁵

These enforcement tools therefore can be used to enforce laws in the following areas:

Minnesota Statutes	Regulatory Area
Sections 326B.101 to 326B.16	State Building Code (except as listed below)
Sections 326B.163 to 326B.191	Elevators
Sections 326B.194 to 326B.197	Industrialized/Modular Buildings
Sections 326B.31 to 326B.399	Electrical
Sections 326B.41 to 326B.49	Plumbing
Sections 326B.50 to 326B.59	Water Conditioning
Sections 326B.801 to 326B.89	Residential Trades; Licensing
Sections 326B.90 to 326B.93	High Pressure Piping
Section 326B.94	Passenger Boats and Masters
Sections 326B.952 to 326B.998	Boiler Inspections; Licensure
Sections 327.31 to 327.36	Manufactured Home Building Code

C. General information about the administrative order and licensing order penalty authority.

The law grants the Commissioner authority to issue administrative orders against any person who violates applicable law, which may: (1) require that violations be corrected; (2) require the violator to cease and desist from committing the violations; and (3) assess monetary penalties.

Similarly, the law grants the Commissioner the authority to issue licensing orders against licensed individuals which deny, condition, limit, censure, suspend, or revoke a person’s permit, license, registration, or certificate. A licensing order may also include an assessment of monetary penalties.

The maximum amount of the monetary penalty in an administrative order depends on the number of violations. In administrative orders, the maximum penalty is \$10,000 for

⁴ Minn. Stat. § 326B.082, subd. 1 (2010).

⁵ Minn. Stat. § 326B.081, subd. 3 (2010).

each violation of the applicable law. Similarly, in licensing orders, the maximum penalty is \$10,000 for each violation or act, conduct, or practice which forms the basis for the licensing order. For the sake of simplicity, this Plan uses the word “violation” as meaning, with respect to administrative orders and licensing orders, each violation or act, conduct, or practice which forms the basis for the order.

Minnesota Statutes § 326B.083 contains requirements that apply to monetary penalties assessed in either administrative or licensing orders. In determining the amount of a penalty assessed in either type of order, the Commissioner must consider the following factors: willfulness, gravity, history, number of violations, economic benefit, and other factors that justice may require.⁶ For repeat violations, the Commissioner must also consider similarity to previous violations, time elapsed, the number of previous violations, and the response of the person to the most recent previous violation.⁷ The order must include a statement of facts supporting the claim that violations have occurred, a reference to the applicable law that has been violated, a statement of the amount of the penalty, a statement of the person’s right to request a hearing, and a statement that, when the order becomes final, the Commissioner may file and enforce the unpaid portion of the penalty as a judgment in district court without further notice or additional proceedings.⁸ If a monetary penalty is included in an administrative order, the order must also state the amount of the penalty, if any, that will be forgiven if the person who is the subject of the order demonstrates to the Commissioner by the 31st day after the order is served that the person has corrected the violation or has developed a correction plan acceptable to the Commissioner.⁹ The law provides an expedited hearing process in case of appeal.¹⁰

D. Procedures used to develop the Plan for Assessing Penalties in Administrative Orders and Licensing Orders.

Minnesota Statutes § 326B.082, subdivision 14, provides that the Commissioner may prepare a plan for assessing penalties in administrative orders and licensing orders. This statute further requires that the commissioner provide a 30-day period for public comment on any such plan. The Commissioner followed this procedure to develop this Plan. Copies of the procedures used to solicit comments, notices issued requesting comment, and public comments received on development of the Plan remain on file with the department. Attached to this Plan as Appendix B is a copy of the procedures the Commissioner will use to review and modify an existing plan.

E. Legal effect of this Plan.

Minnesota Statutes § 326B.082, subdivision 14, provides that, if the Commissioner assesses penalties in accordance with this Plan, then those penalties are presumed

⁶ Minn. Stat. § 326B.083, subd. 1 (2010).

⁷ *Id.*

⁸ Minn. Stat. § 326B.083, subd. 2 (2010).

⁹ Minn. Stat. § 326B.082, subd. 7(a) (2010).

¹⁰ Minn. Stat. § 326B.082, subd. 8 (2010).

reasonable. If the person subject to an order containing a monetary penalty assessed according to this Plan requests a hearing, then the administrative law judge may not recommend a change in the amount of the penalty unless the judge determines that, based on the factors contained in Minnesota Statutes § 14.045, subdivision 3, the amount of the penalty is unreasonable.¹¹

II. USE OF PENALTY AUTHORITY

A. Generally.

The factors used to determine the penalty amount assessed in an administrative order are the same as the factors used to determine the penalty amount of a penalty assessed in a licensing order. However, there is an important procedural difference: in administrative orders (but not in licensing orders) all or a portion of the monetary penalty may be forgivable:

The commissioner may order that part or all of the monetary penalty will be forgiven if the person to whom the order is issued demonstrates to the commissioner by the 31st day after the order is issued that the person has corrected the violation or has developed a correction plan acceptable to the commissioner.¹²

Accordingly, after determining a penalty amount in an administrative order, the Commissioner must also determine whether all or a portion of the penalty should be forgiven. As noted above, this additional procedural step is not present in the Commissioner's determination of a penalty amount in a licensing order.

B. Determination of penalty amount.

In determining the penalty amount in either administrative orders or licensing orders, the Commissioner will ordinarily consider each violation separately. However, if more than one correctable code violation by the regulated party was identified in a single inspection or review of compliance, the Commissioner may choose to combine these correctable code violations for the purpose of calculating an entirely forgivable penalty.

In determining the amount of penalty assessed for an initial violation, the Commissioner shall consider:

- the willfulness of the violation;
- the gravity of the violation, including damage to humans, animals, and the natural resources of the state;
- the history of past violations;
- the number of violations;

¹¹ Minn. Stat. § 326B.083, subd. 3(c) (2010).

¹² Minn. Stat. § 326B.082, subd. 7(a) (2010).

- the economic benefit gained by the regulated party by allowing or committing the violation, including market advantages over competitors who comply with the applicable law; and
- other factors that justice may require.¹³

In determining the gravity of the violation, the Commissioner will consider both the extent of the harm or potential for harm from the violation and the deviation from compliance with the applicable law violated by the regulated party.

If the Commissioner determines that there are other factors that justice requires to be considered, then the Commissioner will include in the administrative order or licensing order a list of those other factors which were considered.

For a violation after an initial violation, in determining the amount of the penalty, the Commissioner will consider the factors listed above for initial violations, and must also consider the following factors:

- the similarity of the most recent previous violation and the violation to be penalized;
- the time elapsed since the last violation;
- the number of previous violations; and
- the response of the regulated party to their most recent previous violation identified.¹⁴

For both initial and repeat violations, the Commissioner uses a worksheet, called a penalty calculation worksheet, found in appendix A, to determine the penalty amount.

C. Determination of whether any portion of the penalty is forgivable in an administrative order.

After determining the penalty amount to be assessed in an administrative order, the Commissioner will determine whether all or any portion of the monetary penalty should be forgiven.¹⁵ For each violation included in an administrative order, the Commissioner will determine whether the penalty to be assessed should be forgivable, non-forgivable, or a combination of forgivable and non-forgivable. In making this determination, the Commissioner will consider the following factors:

1. Is the violation a type of violation which can be corrected?
2. If so, then based on all of the facts including the regulated party's history of violations, does the division believe that making all or a portion of the penalty forgivable will encourage the regulated party to comply with the applicable law in the future?

¹³ Minn. Stat. §§ 326B.083, subd. 1 and 14.045, subd. 3(a) (2010).

¹⁴ Minn. Stat. §§ 326B.083, subd. 1 and 14.045, subd. 3(b) (2010).

¹⁵ Minn. Stat. § 326B.082, subd. 7(a) (2010).

If the violation is a type of violation that cannot be corrected, then the entire penalty assessed for that violation will be non-forgivable. For example, if the violator is unlicensed and performed work for which a license is required, that is a violation which cannot be corrected; the work has already been done. Therefore, penalties assessed for performing work without the required license will be non-forgivable penalties. On the other hand, if the violation is a code violation that can be fixed, such as incorrect backflow protection where the plumbing has not yet been put into service, then this is a violation that ordinarily could be corrected and a forgivable penalty may be appropriate.

If the violation can be corrected, then the Commissioner will determine whether to make all or any portion of the penalty forgivable based on all of the facts involved, including the regulated party's history of violations. For example, if the regulated party has previously received a forgivable penalty for the same or a similar violation, this indicates that the previous forgivable penalty did not provide sufficient incentive for future compliance and the current penalty should not be forgiven. Generally, penalties for repeat violations will be entirely non-forgivable because making part of the penalty forgivable is unlikely to encourage compliance.

D. Penalties for failure to correct violations in final administrative orders.

Pursuant to Minnesota Statute § 326B.082, subdivision 7(b), the Commissioner may issue an administrative order for failure to correct a violation by the deadline stated in a final administrative order issued under Minnesota Statute § 326B.082, subdivision 7(a).¹⁶ Each day after the deadline during which the violation remains uncorrected is a separate violation for purposes of calculating the maximum monetary penalty amount. When the Commissioner issues an administrative order for failure to correct a violation in a final administrative order, the penalty assessed will be non-forgivable. In this situation, the final administrative order was not sufficient to ensure correction, and therefore there would be no reason to believe that making a penalty forgivable would encourage compliance.

III. PLAN REVISION

The Commissioner will evaluate this Plan as necessary. If revisions to the Plan are determined to be necessary, then the Commissioner will follow the procedure for plan revision provided for in Appendix B.

¹⁶ Pursuant to Minn. Stat. § 326B.081, subd. 5 (2010), an administrative order becomes "final" when the order is no longer subject to review by the Office of Administrative Hearings or the appellate courts due to issuance of a consent order or the exhaustion or expiration of rights to appeal the order.

IV. ADOPTION OF PLAN

Pursuant to authority granted under Minnesota Statute § 326B.082, subdivision 14, I approve and adopt this Plan for Assessing Penalties in Administrative Orders and Licensing Orders.

SO APPROVED AND ADOPTED this 5th day of December 2011



Ken B. Peterson, Commissioner
Minnesota Department of Labor and Industry

Appendix A

Penalty Calculation Worksheet

INSTRUCTIONS

Introduction

This worksheet provides guidance when calculating the amount of a penalty in either an administrative order (AO) or licensing order (LO) issued under Minnesota Statutes § 326B.082. The calculation of the penalty is a discretionary act based on the recommendation of the Department of Labor and Industry's Construction Codes and Licensing Division's (CCLD) staff and on the criteria for penalty assessment described in Minnesota Statutes § 326B.083 and in the "Plan for Assessing Penalties in Administrative Orders and Licensing Orders" (Plan).

If a regulated party has committed more than one violation, a separate penalty is generally calculated for each violation. The exception would be multiple code violations for which the penalty will be entirely forgivable. The separate penalties are added together for the total penalty amount.

There are more steps involved in calculating penalties to be assessed in AOs than in calculating penalties to be assessed in licensing orders. Therefore, this worksheet will first describe the process for AOs, and will then explain the process for licensing orders.

Outline of Penalty Calculation Process for AOs

In calculating the penalty to be assessed in an AO, these steps should be followed for each violation (or group of code violations where the entire penalty for those code violations will be non-forgivable).

- Step 1: Calculate the base penalty.
- Step 2: Determine any adjustments to the base penalty.
- Step 3: Determine if the penalty is forgivable, non-forgivable, or a combination.
- Step 4: If the penalty for any one violation exceeds \$10,000 against any one person, then reduce the penalty to \$10,000.

Explanation of Steps in the Penalty Calculation Process

Step 1: Calculate the base penalty.

CCLD staff must use the following matrix to calculate the base penalty for all violations. The overriding factor is the gravity of the violation, including damage or potential damage to humans, animals, air, water, land, or other natural resources of the state. The vertical axis of the matrix represents the gravity of the violation (actual harm or the potential for harm). The horizontal axis represents the deviation from compliance (extent, duration and number of violations). Each violation is rated on each axis as either severe, moderate, or minor.

		DEVIATION FROM COMPLIANCE		
		MINOR	MODERATE	SEVERE
HARM OR POTENTIAL FOR HARM	MINOR	\$0 to \$500	\$200 to \$1,000	\$500 to \$2,000
	MODERATE	\$500 to \$2,000	\$1,000 to \$3,500	\$2,000 to \$5,000
	SEVERE	\$2,000 to \$5,000	\$3,500 to \$8,000	\$5,000 to \$10,000

When calculating the harm or potential for harm to humans, animals, air, water, land, or other natural resources of the state, the risk of actual harm caused by the violation should be considered. But because many departmental laws and regulations are preventive in nature, the focus may be on potential for harm and not on actual harm. Where actual harm is observed from a violation, however, the potential for harm has been realized and the rating may reflect this fact.

When calculating deviation from compliance, the quantity or extent of the violation, i.e., "how much, how far," should be considered. In so doing, the focus is on the extent, duration and number of violations.

Once the position of the violation in the matrix is established, then a base penalty from within the applicable range may be determined. The amount chosen is discretionary because the matrix is intended to be only a guide. However, similar types of violations should be assigned similar base penalties depending on the circumstances of a particular case.

Step 2: Determine any adjustments to the base penalty.

CCLD staff may make adjustments to the base penalty for each of the following factors which may apply to the violation. The first four factors listed below should only be considered in the case of repeat violations. The remaining factors should be considered in all cases.

- A. **For repeat violations only:** If the violation is a repeat violation, determine whether to adjust the penalty based on one or more of the following four factors. Minnesota law states that these factors "must" be addressed when agency staff calculates a penalty for a repeat violation. For each applicable factor, the base penalty may be increased.
- (1) Similarity to previous violations. For a repeat violation, the extent to which the current violation is similar to the most recent previous violation must be determined. The greater the similarity between the current violation and the most recent previous violation, the more the penalty may be increased.
 - (2) Time elapsed since last violation. For a repeat violation, an increase in the penalty may be appropriate based on the time elapsed since the most recent previous violation. The more recent the last violation, the greater the penalty increase may be.
 - (3) Number of previous violations. For repeat violations, an increase in the penalty may be appropriate based on the number of previous violations. The more previous violations, the greater the penalty increase may be.

- (4) Response to most recent violation. For repeat violations, an increase in the penalty may be appropriate for the response of the regulated party to the most recent previous violation. The less satisfactory the response, the greater the penalty increase may be.

B. For all violations: For all violations, no matter whether the penalty is forgivable or non-forgivable, the following five factors must be considered by CCLD staff in determining whether an adjustment to the base penalty is appropriate and the amount of any adjustment.

- (1) The willfulness of the violation. If the unlawful behavior was willful, an upward adjustment may be warranted. A violation is willful if the violator's conduct was performed with knowledge that it was illegal, if the violator reasonably should have known that the conduct was illegal, or if the violator proceeded with indifference about whether the conduct was illegal.

In addition to consideration of behavior when committing the violation, the violator's response to the division after the division begins to seek compliance should be considered. If the violator refuses to respond to division notices or calls or refuses to take any corrective action, such recalcitrance may establish the violator's willfulness and warrant an increased penalty.

- (2) History of past violations. If the violation is a repeat violation, then the previous similar violations have already been considered above. In this section, therefore, only the history of past violations which have not already been considered should be utilized. If the violator has no history of violations, the penalty under this section may not be increased. A long history of documented compliance may be a mitigating factor. In considering past violations, the similarity to the current violations, the number of past violations, the seriousness of the past violations, the time elapsed since the last violation, and the response to the most recent violation should be considered. The greater the history of past violations, the greater the penalty increase may be.
- (3) The number of current violations. The base penalty may be increased depending on the number of current violations. Previous violations are not considered in calculating this adjustment factor. Moreover, if a separate base penalty for each of the current violations is being calculated, then no adjustment to the penalty based on the number of current violations should occur. However, if base penalty amounts have not been calculated separately for each violation, and there are multiple current violations, then an adjustment to the base penalty amount may be appropriate. The

larger the number of current violations, the greater the penalty increase may be. The penalty may be increased based on the number of violations despite whether the violations are initial violations or repeat violations.

- (4) **Economic benefit.** The amount of economic benefit gained by the regulated party by engaging in the violation, if any, must be determined. Economic benefit may be money the regulated party saved by not complying with the relevant law, or money the regulated party made as a result of violating the law. Economic benefit may also include interest gained on funds not expended or expended after the deadline for expenditure. Using the interest rate specified in Minnesota Statutes § 549.09 is appropriate.

After the amount of money the regulated party saved or made as a result of the violation has been determined, then that amount should be adjusted to reflect the cost of the corrective action required by the division, if any. The dollar amount of the adjustment for economic benefit should be equal to the money saved or made as a result of the violation minus the expense of the required corrective action. The adjustment for economic benefit cannot be a negative number.

- (5) **Other factors as justice may require.** Individual cases raise unique facts and issues. Under this section, the base penalty may be adjusted based on those unique facts and issues. Factors to be considered may include, but are not limited to, whether the violation was negligent, reckless, or careless. If the behavior was negligent, reckless, or careless, then an increase of the base penalty may be appropriate. If the adjustment of the base penalty is based in whole or in part on "other factors as justice may require," then those factors must be identified in the AO.

Step 3: Determine if the penalty is forgivable or non-forgivable.

- A. Determine if the violation can be corrected.** If the violation cannot be corrected, then the penalty must be entirely non-forgivable. If the violation can be corrected, then proceed to item B.
- B. Determine whether to make all or a portion of the penalty forgivable.** The ability to forgive a penalty is a tool to use when it will assist in achieving the goal of compliance. Sometimes, a forgivable penalty or partially forgivable penalty will give the violator adequate incentive to take

corrective action. In other cases, however, a non-forgivable penalty may be necessary to deter the violator or others from such conduct. The decision on what portion, if any, of the penalty to make forgivable will depend on the facts of the case. If the regulated party has previously received a forgivable penalty for the same or similar violation, then ordinarily the penalty should be entirely non-forgivable because the previous forgivable penalty did not result in compliance.

Step 4: Reduce the penalty, if necessary, to \$10,000 per violation per regulated party.

The penalty established in an administrative penalty order cannot exceed \$10,000 per person for each violation of applicable law. If the penalty calculated exceeds \$10,000 for a regulated party for one violation, then the penalty must be reduced to \$10,000. If the penalty for one violation is a combination forgivable and non-forgivable penalty, then the penalty must be reduced proportionately from both the non-forgivable and forgivable portions so the total equals \$10,000.

Outline of Penalty Calculation Process for Licensing Orders

The penalty calculation process for licensing orders is the same as for administrative orders, except that penalties assessed in licensing orders are never forgivable. Therefore, the steps listed above will be followed in calculating penalties for licensing orders, with the exception of Step 4.

S U M M A R Y

General Information

Regulated Party Name:

License Number:

Address:

Inspector:

Date of Inspection:

Site Name and Address:

	Present Violations Cite statute/rules	Violator(s): Individual (I) Corporation (C) Both (B)	Repeat?	
1.		<input type="checkbox"/> I <input type="checkbox"/> C <input type="checkbox"/> B	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.		<input type="checkbox"/> I <input type="checkbox"/> C <input type="checkbox"/> B	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3.		<input type="checkbox"/> I <input type="checkbox"/> C <input type="checkbox"/> B	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4.		<input type="checkbox"/> I <input type="checkbox"/> C <input type="checkbox"/> B	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5.		<input type="checkbox"/> I <input type="checkbox"/> C <input type="checkbox"/> B	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6.		<input type="checkbox"/> I <input type="checkbox"/> C <input type="checkbox"/> B	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Step 1: Calculate the base penalty.
(Penalty Matrix located on page 2 of Appendix A)

Violation #1:

Potential for harm is:

Why?

The deviation from compliance is:

Why?

Base Penalty Amount: \$

Violation #2:

Potential for harm is:

Why?

The deviation from compliance is:

Why?

Base Penalty Amount: \$

Violation #3:

Potential for harm is:

Why?

The deviation from compliance is:

Why?

Base Penalty Amount: \$

Total Base Penalty		Total
		\$

Step 2: Determine any adjustments to base penalty

A. For repeat violations only:
(In reasoning, include detailed references to previous violations)

	Total
(1) Similarity to previous violations.	
Adjustment percent	%
Adjustment amount	\$
Reason for adjustment:	
(2) Time elapsed since last violation.	
Adjustment percent	%
Adjustment amount	\$
Reason for adjustment:	
(3) Number of previous violations.	
Adjustment percent	%
Adjustment amount	\$
Reason for adjustment:	
(4) Response to most recent violation.	
Adjustment percent	%
Adjustment amount	\$
Reason for adjustment:	

Step 2: Determine any adjustments to the base penalty (continued).

B. For all violations:

	Total
(1) The willfulness of the violation.	
Adjustment percent	%
Adjustment amount	\$
Reason for adjustment:	
(2) History of past violations.	
Adjustment percent	%
Adjustment amount	\$
Reason for adjustment:	
(3) The number of current violations	
Adjustment percent	%
Adjustment amount	\$
Reason for adjustment:	
(4) Economic Benefit.	
Adjustment amount	\$
Explanation of economic benefit gained:	
(5) Other factors justice may require.	
Amount of adjustment for other factors	\$
Identify factors considered in this section:	

Reason for adjustment based on these factors: _____	

Total Adjustment to Base Penalty	Total \$
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Step 3: Determine if the penalty is forgivable.

Is any portion of the penalty forgivable?

No

Yes

Why:

Forgivable	Non-forgivable	Total
\$	\$	\$

Step 4: Reduce the penalty, only if greater than \$10,000.

	Forgivable	Non-forgivable	Total
Total initial penalty	\$	\$	\$
Amount of reduction to meet \$10,000	\$	\$	\$
Net penalty	\$	\$	\$

Total Assessed Penalty

Forgivable	Non-forgivable	Total
\$	\$	\$

Appendix B: Plan modification

Procedure to modify Plan for Assessing Penalties in Administrative Orders and Licensing Orders.

1. Notice shall be published in the State Register and on the Department's website that modifications have been proposed to the existing Plan. A copy of the proposed modifications shall be made available on the Department's website. A copy of the notice shall be e-mailed to all persons who have requested e-mail notice of rulemaking proceedings on the subject matter areas within CCLD. The public shall be afforded at least 30 days to comment.
2. At the close of the comment period, CCLD staff, in consultation with staff of the Department's Office of General Counsel, will review comments and make a final recommendation to the Commissioner for modifications to the existing Plan.
3. Revision of the Plan may occur when a new or modified rule or law becomes effective or changes related to hazards relating to construction codes or licensing are determined by the agency. To update the Plan when a new or revised rule is adopted, notice of the changes to the Plan will be published in the State Register when notice of the adoption of rules is published or through separate notice. Changes to the Plan will be effective with the new or revised rules or as specified in the notice.
4. Revisions to the existing Plan must be approved and adopted by the Commissioner of Labor and Industry and are effective on adoption.