

Public Workshop on Administrative Penalties Regulations (22 CCR 66272.60-66272.69) to Evaluate Possible Revisions

Date and Time: June 7, 2019, 9:00 a.m. to 12:15 p.m.

Location: Boardroom, 8800 Cal Center Drive, Sacramento, California 95826

Sign-in starts at 8:45 a.m.

Agenda

- I. Welcome, introductions, and housekeeping (10 minutes)
- II. Short presentation (25 minutes)
- III. Modified world café
 - a. Instructions about the modified world café format and formation of small groups (5 minutes)

Break (10 minutes)
 - b. Modified world café discussions
 - Topic 1: Determining the Potential for Harm and Extent of Deviation for Each Violation [22 CCR 66272.62 (a) to (c)] (30 minutes)
 - Topic 2: The Penalty Matrix and Initial Penalty Adjustment Factors [22 CCR 66272.62 (d) and 22 CCR 66272.63] (30 minutes)

Break (10 minutes)
 - Topic 3: Multiple Violations, Multiday Violations, Base Penalty, and Adjustments to the Total Base Penalty [22 CCR 66272.64, 66272.65, 66272.67, and 66272.68] (30 minutes)
 - Topic 4: Minor Violations Subject to a Penalty [22 CCR 66272.66] and other topics not covered in Part 1-3 (30 minutes)
- IV. Question and Answer Session (15 minutes)
- V. Closing Remarks

Guide Questions for Small Group Discussions

Topic 1: Determining the Potential for Harm and Extent of Deviation for Each Violation (30 minutes)

- Step 1a of penalty determination process
 - 22 CCR 66272.62 (a) to (c): pp. 7-8 of handout #1
1. Currently, there are two factors used to determine the initial penalty, namely “potential for harm” and “extent of deviation”. In your opinion, what factors should the initial penalty for each violation be based on?
 2. What changes should be made to the categories for degree of potential for harm and extent of deviation, and their definitions?

Additional questions to consider:

1. What are some other ways we might calculate initial penalties?
2. Do we need to have more explanations to the initial and base penalty calculation? If so, please specify the nature of what the explanation should include or address.
3. Do you understand the categories for degree of potential for harm, and extent of deviation, and are they intuitive? If your answer is no, how should the categories for degree of potential for harm and extent of deviation, and their definitions, be revised?
4. What changes can be made to the penalty regulations to enhance fairness and consistency?
5. In what ways do you think the current regulations most lead to inconsistent results?

Topic 2: The Penalty Matrix and Initial Penalty Adjustment Factors [22 CCR 66272.62 (d) and 22 CCR 66272.63] (30 minutes)

- Steps 1b, 2a, and 2b of penalty determination process
 - 22 CCR 66272.62 (d) and 22 CCR 66272.63: pp. 8 & 11 of handout #1
1. How should the penalty matrix, set forth in 22 CCR 66272.62 (d), be revised?
 2. The following are some alternatives to the current penalty matrix: (i) set penalties for common violations; (ii) two or more separate penalty matrices; and (iii) penalty matrix that is weighted for potential for harm. See handout of examples of penalty matrix alternatives. Identify the alternative(s) that would be a good replacement for the current penalty matrix? Please describe how the alternative(s) you identified will function?
 3. How should the regulations for initial penalty adjustment factors [22 CCR 66272.63] be revised?

Additional questions to consider:

1. Should DTSC continue using one penalty matrix for all violations or would you prefer a system where we establish two or more separate penalty matrices?
2. If DTSC had two or more separate penalty matrices, should those matrices be categorized by the type of violation or the type of waste stream involved?
3. Do you prefer DTSC to establish set penalties for common violations?
4. Do you prefer DTSC to establish set penalties for common violations? Do you think that having set penalties for common violations, in addition to the penalty matrix, will streamline the enforcement process?
5. In general, when determining a penalty, should a violation's potential for harm be considered more than the extent of deviation?
6. Are the initial penalty adjustment factor regulations clear or do they need more clarification?

Topic 3: Multiple Violations, Multiday Violations, Base Penalty, and Adjustments to the Total Base Penalty [22 CCR 66272.64, 66272.65, 66272.67, and 66272.68] (30 minutes)

- Steps 3 to 7 of penalty determination process
 - 22 CCR 66272.64, 66272.65, 66272.67, and 66272.68: pp. 13, 15, 19, 21-22 of handout #1
1. How should the regulation sections regarding multiple violations and multiday violations be revised?
 2. How should the regulations sections regarding base penalty and adjustments to the total base penalty be revised?

Additional questions to consider:

1. What should DTSC consider when assessing penalties for multiple violations?
2. Do you think multiple incidents of the same violation should be weighed more than one incident of a violation that occurred over multiple days, vice versa, or should they be equally weighted?
3. If a facility has a history of multiple violations, how can we best address this issue?
4. Do you think general adjustments to the base penalty for cooperation, prophylactic effect, and compliance history are appropriate? If not, could these adjustments be reworked to be more appropriate?
5. What mitigating factors should be considered when calculating a base penalty?

Topic 4: Minor Violations Subject to a Penalty [22 CCR 66272.66] and other topics not covered in Part 1-3 (30 minutes)

➤ 22 CCR 66272.66: p. 17 of handout #1

1. Currently, only a very small fraction of Minor violations is subject to a penalty (according to 22 CCR 66272.66). What is your opinion about having small set penalties for Minor violations?
2. How should violations that result in actual harm be penalized, compared to similar violations that can only be assessed for potential for harm?
3. What other comments do you have regarding the penalty regulations that were not discussed previously?

Additional questions to consider:

1. For which minor violations should DTSC apply small, set penalties?
2. Should a violation with potential for harm be penalized less than a violation that causes actual injury or damage to environment?
3. Is there a different approach to these penalty regulations that DTSC has not appeared to consider?
4. Do you believe DTSC should use computer software, which uses a larger matrix of factors, to generate penalties? Is DTSC failing to utilize technological advancements?
5. Do you have any general concerns regarding the current penalty regulations and/or the discussed alternatives?
6. Which DTSC staff classification should calculations violation penalties – the inspector, the inspector's management, or a Hazardous Waste Management Program attorney?