

**State of California  
Office of Administrative Law**

In re:  
Department of Industrial Relations

Regulatory Action:

Title 8, California Code of Regulations

Adopt sections:  
Amend sections: 333, 336  
Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION

Government Code Sections 11346.1 and  
11349.6

OAL File No. 2015-0203-01 E

This action amends regulations to implement statutory changes which took effect January 1, 2015. Existing statutes allow the Department of Industrial Relations (DIR), within certain statutory parameters, to issue citations, impose civil penalties, and require abatement for violations of occupational health standards. DIR adopted regulations to implement the statutes and clarify the parameters. The legislature made recent statutory changes to the parameters, causing inconsistencies with portions of the existing regulations. The regulatory changes bring the DIR regulations back into conformity with the amended statutes. To conform to statute, DIR amends the regulations to (1) condition abatement credits upon an employer showing proof of abatement for serious violations; and (2) allow DIR flexibility to adjust earned abatement credits after a citation becomes a final order by operation of regulatory law when an employer provides sufficient proof of timely abatement.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 2/12/2015 and will expire on 8/12/2015. The Certificate of Compliance for this action is due no later than 8/11/2015.

Date: 2/12/2015

  
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Mark Storm  
Senior Attorney

For: DEBRA M. CORNEZ  
Director

Original: Christine Baker  
Copy: Christopher Grossgart

DEPARTMENT OF INDUSTRIAL RELATIONS

**DIVISION OF OCCUPATIONAL SAFETY & HEALTH****LEGAL UNIT**1515 CLAY STREET, 19<sup>TH</sup> FLOOR

OAKLAND, CA 94612

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PO BOX 420603  
SAN FRANCISCO 94142-0603

February 2, 2015

VIA OVERNIGHT COURIEROffice of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339RE: Abatement Credit for Div. of Occupational Safety and Health Citations  
Proposed Emergency Rulemaking (8 C.C.R. §§ 333, 336)

Dear Sir/Madam:

I am an attorney with the Department of Industrial Relations, Division of Occupational Safety and Health. On behalf of the Director of the Department of Industrial Relations, I submit the following documents in connection with the above-captioned proposed emergency rulemaking ("the Proposed Emergency Rulemaking"):

1. Seven copies of the Specific Language (Amended) of the Proposed Emergency Rulemaking, together with one original and six copies of the completed, executed Form 400;
2. The Notice of Proposed Emergency Regulations of the Department of Industrial Relations which includes a finding of emergency required by Government Code section 11346.1(b,) an estimate as required by Government Code section 11346.5(a)(6,) and a statement that the Department has complied with the requirement of Government Code section 11346.1(a)(2) to provide public notice of the Proposed Emergency Rulemaking.

Please note that the "Specific Language (Amended)" submitted herewith differs slightly from the Specific Language published for notice on January 16, 2015. Specifically, the Director published, but then deleted, the final sentence of proposed Section 333(b,) which read: "The employer may not appeal such modification to the Appeals Board." It is my understanding from discussions with your office that deletion of this sentence does not require re-publication of the Proposed Emergency Rulemaking for five working days.

Should you have any questions or comments about the Proposed Emergency Rulemaking, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Chris Grossgart".

CHRISTOPHER GROSSGART  
Industrial Relations Counsel IV

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Industrial Relations			AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Abatement Credit for Div. of Occupational Safety and Health Citations	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND §§ 333, 336
TITLE(S) 8	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

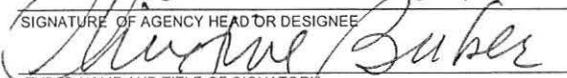
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Chris Grossgart	TELEPHONE NUMBER (510) 286-7348	FAX NUMBER (Optional) (510) 286-7039	E-MAIL ADDRESS (Optional) cgrossgart@dir.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 2/2/2015
TYPED NAME AND TITLE OF SIGNATORY Christine Baker, Director of the Department of Industrial Relations	

For use by Office of Administrative Law (OAL) only

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF OCCUPATIONAL HEALTH AND SAFETY

**SPECIFIC LANGUAGE (AMENDED)**

TITLE 8 of the CALIFORNIA CODE OF REGULATIONS  
Chapter 3.2. California Occupational Safety and Health Regulations  
Subchapter 1. Regulations of the Director of Industrial Relations  
Article 4. Proposed Penalty Procedure  
§333. Notice of Proposed Assessment of Civil Penalties  
§336. Assessment of Civil Penalties

**§333. Notice of Proposed Assessment of Civil Penalties; Final Order.**

(a) Where a civil penalty is indicated, the Division shall after, or concurrent with the issuance of a citation, and within a reasonable time after the date the violation occurred, notify the employer by certified mail of the civil penalty proposed by the Division respecting the item(s) set forth as violation(s) in the citation. Any citation and/or Notice of Proposed Civil Penalty shall be deemed to be the final order of the Appeals Board, not subject to review by or appeal to any court or agency, unless within 15 working days from the date of the receipt of such citation or such notice of proposed civil penalty, the employer notifies the Appeals Board in writing of his intention to contest the citation and/or the civil penalty, with respect to violations alleged by the division, abatement periods, amount of proposed penalties, and the reasonableness of the changes required by the division to abate the condition.

(b) Notwithstanding subsection (a), the Division may modify the civil penalty of a citation pursuant to Section 336(e)(2), even if the citation has become a final order of the Appeals Board.

NOTE: Authority cited: Sections 54, 55 and 6319, Labor Code. Reference: Section 6319, Labor Code.

**§336. Assessment of Civil Penalties.**

Civil penalties for Regulatory, General, Serious, Repeat, Willful, and Failure to Abate violations shall be assessed in the following manner:

(a) Regulatory Violation -

(1) In General -Any employer who commits any Regulatory violation (as provided in Section 334(a) of this article) shall be assessed a civil penalty of up to \$7000 for each such violation. Except as set forth in parts (2) through (6) of this subsection, a minimum proposed penalty of \$500, representing the gravity of the violation, shall be assessed against employers who commit Regulatory violations. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(2) For Carcinogens -A minimum proposed penalty of \$1,000 for all carcinogen standard regulatory violations, other than reporting use violations, representing the gravity of the violation, shall be assessed against the employers who commit such violations. The proposed penalty shall be adjusted for Size, Good Faith and History; however, an abatement credit shall not be granted.

(3) For Carcinogens Failure to Report Use. Any employer who violates a reporting requirement respecting the use of a carcinogen as defined in Title 8 of the California Code of Regulations section 330(f), shall be assessed a minimum proposed civil penalty of \$2,500. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(4) For Violation of Permit or Registration Requirements. Any employer who violates the permit requirements of article 2, Permits -Excavations, Trenches, Construction and Demolition, and The Underground Use of Diesel Engines in Work in Mines and Tunnels, commencing with section 341 of Title 8 of the California Code of Regulations, or the Registration requirements of article 2.5, Registration -Asbestos-Related Work commencing with section 341.6 of Title 8 of the California Code of Regulations, shall be assessed a minimum proposed civil penalty of \$1,250. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(5) For Violation of Elevator Permit and Posting Requirements. Any person owning or having custody, management, or operation of an elevator who operates any such elevator without a valid permit, or who fails to post the permit as required, may be assessed a civil penalty pursuant to the provisions of this article of up to \$1000.

(6) For Failure to Report Serious Injury or Illness, or Death of an Employee - Any employer who fails to timely report an employee's injury or illness, or death, in violation of section 342(a) of Title 8 of the California Code of Regulations, shall be assessed a minimum penalty of \$5,000.

(b) General Violation -Any employer who violates any occupational safety and health standard, order or special order and such violation is determined to be a General violation (as provided in section 334(b) of this article) may be assessed a civil penalty of up to \$7000 for each such violation.

Gravity of a General Violation -The Base Penalty of a General violation is determined by evaluating Severity (as provided in section 335(a)(1)(A) of this article). If the Severity is:

LOW -	Thebase Penalty shall be \$1,000.
MEDIUM -	The Base Penalty shall be \$1,500.
HIGH -	The Base Penalty shall be \$2,000.

The Base Penalty for the General violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW - 25% of the Base Penalty shall be subtracted.  
MEDIUM - No adjustment shall be made.  
HIGH - 25% of the Base Penalty shall be added.

The Base Penalty for the General violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW - 25% of the Base Penalty shall be subtracted.  
MEDIUM - No adjustment shall be made.  
HIGH - 25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

### (c) Serious Violation

(1) In General -Any employer who violates any occupational safety and health standard, order, or special order, and such violation is determined to be a Serious violation (as provided in section 334(c)(1) of this article) shall be assessed a civil penalty of up to \$25,000 for each such violation. Because of the extreme gravity of a Serious violation an initial base penalty of \$18,000 shall be assessed.

The Base Penalty for the Serious violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW - 25% of the Base Penalty shall be subtracted.  
MEDIUM - No adjustment shall be made.  
HIGH - 25% of the Base Penalty shall be added.

The Base Penalty for the Serious violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW - 25% of the Base Penalty shall be subtracted.  
MEDIUM - No adjustment shall be made.  
HIGH - 25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(2) For Carcinogens -Any employer who violates any occupational safety and health standard, order, or special order respecting the use of a carcinogen, and such violation is determined to be a Serious violation (as provided in section 334(c)(4) of this article) shall be assessed a total civil penalty of \$2000 for each such violation. This penalty is not subject to adjustment.

(3) Serious Violation Causing Death or Serious Injury, Illness or Exposure -If the employer commits a Serious violation and the Division has determined that the violation caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, the penalty

shall not be reduced pursuant to this subsection, except the penalty may be reduced for Size as set forth in subsection (d)(1) of this section. The penalty shall not exceed \$25,000.

(4) Operation of an Elevator in an Unsafe Condition or in Violation of an Order Prohibiting Use.

Any person owning or having custody, management or operation of an elevator who operates or permits the operation of the elevator in a condition which is dangerous to life or the safety of any person, or who operates or permits the operation of the elevator in violation of any Order Prohibiting Use issued by the Division, may be assessed a civil penalty pursuant to the provisions of this article of up to \$2000.

(5) For Tower Cranes -Any employer who violates any tower crane standard, order or special order and such violation is determined to be a serious violation (as provided in section 334(c)(1) of this article) shall be assessed a penalty of \$2,000. The penalty shall not be subject to adjustment as set forth in subsections (d) and (e) of this section.

(d) Further Adjustment of Regulatory, General, and Serious Violations -Subject to the provisions of parts (5) through (9) of this subsection, the Gravity-based Penalty established under either subsection (a), (b) or (c) of this section, shall be appropriately adjusted by giving due consideration to the following factors:

(1) The Size of the Business If the Size of the Business (as provided under section 335(b) of this article) is:

10 or fewer employees	- 40% of the Gravity-based Penalty shall be subtracted.
11-25 employees	- 30% of the Gravity-based Penalty shall be subtracted.
26-60 employees	- 20% of the Gravity-based Penalty shall be subtracted.
61-100 employees	- 10% of the Gravity-based Penalty shall be subtracted.
More than 100 employees	- No adjustment shall be made.

(2) The Good Faith of the Employer -If the Good Faith of the Employer (as provided under section 335(c) of this article) is:

GOOD -	30% of the Gravity-based Penalty shall be subtracted.
FAIR -	15% of the Gravity-based Penalty shall be subtracted.
POOR -	No adjustment shall be made.

(3) The History of Previous Violations -If the employer's History of Compliance (as provided under section 335(d) of this article) is:

GOOD -	10% of the Gravity-based Penalty shall be subtracted.
FAIR -	5% of the Gravity-based Penalty shall be subtracted.
POOR -	No adjustment shall be made.

Following the preceding adjustments of the Gravity-based Penalty, the resultant penalty is termed Adjusted Penalty.

(4) If an employer cited for a violation of a safety and health provision within title 8 of the California Code of Regulations was, at the time of citation, making a good faith effort to abate the alleged violation, pursuant to written recommendations of a Consultant of the CAL/OSHA Consultation Service, the following penalty adjustments may apply:

(A) General Violation. All penalties assessed for such General violations may be waived by the Division.

(B) Serious Violation. All penalties for such Serious violations may be subject to an additional adjustment reducing the proposed penalty 50%.

(5) Serious Violations Respecting the Use of a Carcinogen -The penalty for any Serious violation respecting the use of a carcinogen as set forth in subsection (c)(2) of this section is not subject to adjustment pursuant to this subsection and shall not be otherwise reduced.

(6) Regulatory Violations of the Permit and Registration Requirements -The minimum penalty for any Regulatory violation of the permit or registration requirements as set forth in subsection (a)(4) of this section is \$250.

(7) Serious Violations Causing Death or Serious Injury, Illness or Exposure -Subject to the provisions of subsection (c)(3) of this section, the penalty for any Serious violation determined by the Division to have caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, shall not be adjusted pursuant to this subsection, except for Size set forth in part (1) of this subsection.

(8) Injury Prevention Program -The penalty for any Serious violation shall not be subject to adjustment pursuant to this subsection other than for Size as set forth in part (1) of this subsection where the employer does not have an operative injury prevention program as set forth in Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(9) False Declarations of Abatement -Subject to the provisions of subsection (e) of this section, where it is determined after reinspection that the employer has not complied with the abatement requirements of the Division and employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in part (1) of this subsection.

(10) No civil penalty shall be assessed against any new employer for a period of one year after the date the new employer establishes a business in the state for a regulatory or general violation of the Injury and Illness Prevention Program Standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board, if the employer has made a good faith effort to comply with the requirement set forth therein.

(11) No civil penalty shall be assessed against an employer who adopts, posts, and implements in good faith the Model Injury and Illness Prevention Program for Non-High-Hazard Employment prepared by the Division for a first violation of the Injury and Illness Prevention Program standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(12) For an employer who commits a repeat violation (as provided under section 334(d) of this article), the penalty shall not be subject to adjustment pursuant to this subsection, other than for Size as set forth in part (1) of this subsection.

(e) Abatement Credit for General and Serious Violations –

(1) The Adjusted Penalty for General and Serious violations is reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The resultant penalty is termed Proposed Penalty. The following types of violations are not subject to an abatement credit: Violations classified as “Repeat General” or “Willful General” are not subject to an abatement credit.

(1) Violations designated as Repeat or Willful;

(2) Serious violations for which extent and likelihood are rated high;

(3) Serious violations respecting the use of a carcinogen; and

(4) Serious violation causing death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302.

(2) For Serious violations not listed in paragraph (3), the Division shall not grant an abatement credit unless the employer has done any of the following:

(A) Abated the Serious violation at the time of the initial or a subsequent visit during an inspection and prior to the issuance of a citation.

(B) Submitted a signed statement under penalty of perjury and supporting evidence, when necessary to prove abatement, if the signed statement and supporting evidence are received within 10 working days after the end of the period fixed in the citation for abatement.

(3) The following types of Serious violations are not subject to an abatement credit:

(A) Serious violations for which extent and likelihood are rated high;

(B) Serious violations designated as “Repeat Serious” or “Willful Serious;”

(C) Serious violations respecting the use of a carcinogen; and

(D) Serious violations causing death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302.

(f) Penalty for Failure to Abate Regulatory, General or Serious Violations -If the employer fails to abate the violation by the date permitted for its correction or fails to submit to the Division a signed statement of abatement of a violation within ten working days of the date set by the Division for correction of the violative condition, any abatement credit extended pursuant to subsection (e) of this Section shall be rescinded and this amount assessed as part of the failure to abate penalty. In addition, a penalty shall be assessed that is based upon the initial Gravity-based penalty for each calendar day that the previously cited violation continues unabated after expiration of the abatement period. Subject to the provisions of part (1) hereof, the Gravity-based penalty is reduced by the reevaluated adjustment factors. The adjustment factors of Size, Good Faith, and History shall be determined by evaluation of the circumstances at the time of the subsequent inspection when the failure to abate is discovered. The daily additional penalty for failure to abate a violation shall not exceed \$15,000.

Limitations:

- (1) Except (A) where the gravity of the violation is high and exposure to employees is continuous, or (B) the employer has exhibited a high degree of negligence in failing to correct the violation, the daily penalty for failure to abate a Regulatory or General violation may be further reduced up to 90% for the first 120 days the violation continues to exist and up to 50% thereafter where the violation does not bear a direct relationship on employee health and safety. The daily penalty for a Serious violation may be reduced up to 50% where the adjustment factors calculated pursuant to subsection (c) of this section are Low and the History and Good Faith calculated pursuant to subsection (d) of this section are Good.
- (2) When a violation consisted of a number of instances and upon subsequent inspection some instances are found to have been abated and others have not, the daily penalty shall be calculated in proportion to the extent that the violation has been abated.
- (3) Failure to Abate a Serious Violation Causing Death or Serious Injury, Illness or Exposure -If the employer fails to abate a Serious violation and the Division has determined that the failure to abate caused death or serious injury, illness, or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in subsection (d)(1) of this section.
- (4) Failure to Abate a Serious Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury -If the employer fails to abate a serious violation of a crane standard, order, or special order and the Division has determined that the failure to abate caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$14,000 for each calendar day. The penalty is not subject to adjustment.
- (5) False Declaration of Abatement -If it is determined after reinspection that the employer has not complied with the abatement requirements of the Division, and the employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size pursuant to part (1) of subsection (d) of this section.

(g) Repeat Violation -

(1) In General -If a Regulatory, General, or Serious violation is repeated (as provided under section 334(d) of this article) the Proposed Penalty is adjusted upward as follows:

1st repeat - the Proposed Penalty is multiplied by two.

2nd repeat - the Proposed Penalty is multiplied by four.

3rd repeat - the Proposed Penalty is multiplied by ten.

The resultant penalty shall not exceed \$70,000.

(2) For Carcinogens -If a Serious violation respecting the use of a carcinogen or a Regulatory violation concerning a reporting requirement respecting the use of a carcinogen is repeated (as provided in section 334(d) of this article), the total civil penalty shall be as follows:

(A) For repeated Regulatory violations concerning a reporting requirement.

1st repeat - \$5,000 2nd repeat - \$10,000 3rd repeat - \$20,000

(B) For repeated Serious violations respecting the use of a carcinogen.

1st repeat - \$10,000 2nd repeat - \$20,000 3rd repeat - \$40,000

These penalties are not subject to adjustment.

(3) Repeated Violation Causing Death or Serious Injury, Illness or Exposure -The computation of the Proposed Penalty for a repeated violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(h) Willful Violation -If a Regulatory, General, or Serious violation is determined to be willful (as provided under section 334(e) of this article) the Proposed Penalty is adjusted upward as follows:

Regulatory, General and Serious -the Proposed Penalty is multiplied by five. However, the penalty for any willful violation shall not be less than \$5,000 and shall not exceed \$70,000.

(1) Willful Violation Causing Death or Serious Injury, Illness or Exposure -The computation of the Proposed Penalty for a willful violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the

Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(i) Serious Repeated or Willful Repeated Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury -If the employer commits a serious repeated or willful repeated violation of a crane standard, order, or special order, and the Division has determined that the violation caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$140,000. This penalty is not subject to adjustment.

(j) Rounding of the Fractions Amounts of the civil penalties are rounded down to the next whole dollar during the calculation stages, and final figures are adjusted downward to the next lower five dollar (\$5) value.

(k) Multiple Violations Pertaining To A Single Hazard. When a single hazard is the subject matter of multiple violations resulting in civil penalties, the Division may, in its discretion, depart from the preceding criteria to mitigate the cumulative effect of such penalties.

(1) This subsection does not apply to any penalty assessed for a Serious, Willful or Repeated violation or a failure to abate a Serious violation where such violation or violations have been determined by the Division to have caused death or serious injury, illness or exposure pursuant to Labor Code section 6302. This subsection does not apply to any Regulatory, General or Serious violation where the employer does not have an operative injury prevention program as set forth in subsection (d) of this section.

Note: Authority cited: Sections 54, 55, 6319, 6319.3, 6401.7 and 9060, Labor Code. Reference: Sections 6314.5, 6318, 6319, 6320, 6401.7, 6409.1, 6427-6432, 6434, 7320, 7321, 7321.5, 7381 and 9060, Labor Code.

# NOTICE OF PROPOSED EMERGENCY REGULATIONS OF THE DEPARTMENT OF INDUSTRIAL RELATIONS

TITLE 8 of the CALIFORNIA CODE OF REGULATIONS  
Chapter 3.2. California Occupational Safety and Health Regulations  
Subchapter 1. Regulations of the Director of Industrial Relations  
Article 4. Proposed Penalty Procedure  
§333. Notice of Proposed Assessment of Civil Penalties  
§336. Assessment of Civil Penalties

The Director of the Department of Industrial Relations finds that the adoption of these regulations as emergency regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

## FINDING OF EMERGENCY

The Labor Code authorizes the Division of Occupational Safety and Health ("the Division") to issue citations for violations of the occupational safety and health standards set forth in Title 8 of the California Code of Regulations ("Title 8"), and to require abatement of the workplace hazards cited. The Division may also impose civil penalties against employers for the violations it cites. The Division calculates the amount of a proposed civil penalty using factors found in Section 336 of Title 8, including, among other factors: the employer's size (number of employees); its good faith; its history of compliance; the extent of the cited violation; and whether the violation is deemed Regulatory, General, Serious, Willful or Repeat. In addition, Section 336(e) currently requires the Division to reduce the civil penalty by 50% *before the citation is issued*, on the presumption that an employer will abate the cited hazard by the date set for abatement in the citation. However, if an employer appeals a citation to the Occupational Safety and Health Appeals Board ("the Appeals Board"), the requirement for an employer to abate the cited hazard is stayed until the appeal is finally resolved – oftentimes several years after issuance of the citation. Moreover, since the Division automatically grants an employer the 50% abatement credit at the time the citation is issued, there is often no monetary incentive for an employer to abate the cited hazard unless and until the citation is finally affirmed. As a result, under prior law, hazardous work place conditions would go uncorrected for long periods of time, subjecting employees to the potential of serious injuries while the appeal process continued and before the Division could compel an employer to abate.

To encourage more rapid abatement of work place hazards, the Legislature amended Labor Code sections 6319, 6320, and 6625 to prohibit the Division from granting an abatement credit for *Serious* violations (those violations which could cause death or serious injury) unless the employer has actually abated the hazardous condition. (Stat. 2014, chap. 497 [A.B. 1634].) Abatement may be verified either directly by a Division compliance officer during the course of an onsite inspection, or by an employer's statement of abatement (accompanied by supporting evidence) received by the Division within 10 working days after the end of the period fixed for abatement in the citation. These requirements became effective January 1, 2015, and are applicable to citations issued as a result of inspections commenced after that date.

In order to implement the new requirements of A.B. 1634, the Director of the Department of Industrial Relations must amend two sections of Title 8 through emergency regulations. First, the Director must amend Section 336(e) to delete the language that creates the automatic and

prospective 50% abatement credit for Serious citations, and to replace it with an abatement credit that is conditioned upon the employer timely showing actual proof of abatement. This amendment must take effect as soon as possible, as the Director believes that its compliance offices will begin to issue citations as a result of inspections opened in Calendar Year 2015 as early as late January. Thus, the Division will soon find itself in a position where it must violate the Director's existing penalty-calculation regulations in order to comply with the new requirements of A.B. 1634. To avoid this legal conflict, it is necessary to promulgate regulatory changes as "emergency regulations" pursuant to Government Code section 11346.1. The Director's proposed emergency regulations will immediately further the goal of A.B. 1634 by encouraging employers to correct serious unsafe and unhealthy workplace conditions - i.e., those conditions which have a reasonable possibility of causing serious injury or death - within *days* after receipt of a citation in order to receive the 50% civil penalty reduction, rather than potentially waiting up to several *years* to abate once all appeals of a citation have been exhausted. An emergency regulation will allow the safety and health benefits of A.B. 1634 to have an immediate effect.

In addition, the Director must immediately amend Section 333 of Title 8 to resolve another related conflict. Under Section 333, if an employer fails to notify the Appeals Board in writing of its intention to contest a citation within 15 working days from the date it received a citation and civil penalty, then the citation and civil penalty are deemed a final order of the Appeals Board, not subject to review by any court or agency.

The conflict arises because A.B. 1634 provides that an employer is entitled to an abatement credit if it delivers proof of abatement to the Division within 10 working days of the date set for abatement in the citation. In many cases, the Division reasonably must allow 14 days, and sometimes longer, for an employer to abate violations. Thus, an employer need not submit proof of abatement until 10 working days *after* the 14-day abatement period is over – well after the 15-working-day period for appealing a citation has lapsed. However, since an unappealed citation will have become a final order before the date abatement is due, the Division will lose the authority to lower the civil penalty by granting the earned abatement credit. Until the Director is able to amend Section 333, employers will potentially appeal every Serious citation alleging violations that are unabated at the time of issuance, just to preserve the Division's ability to grant the earned abatement credits. Consequently, an emergency regulation allowing the Division to grant abatement credits even after a citation becomes a final order is necessary to comply with A.B. 1634, to ensure that the Division retains the ability to grant employers earned abatement credits, and to prevent the necessity for employers to appeal every Serious citation to the Appeals Board.

There was not sufficient time following the adoption of A.B. 1634 for the Director to address these problems through nonemergency regulations. However, the Director intends to commence a regular rulemaking adopt the same or similar proposals on a permanent basis.

#### **STATEMENT UNDER TITLE 1, CALIFORNIA CODE OF REGULATIONS, §48**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Title 1, California Code of Regulations, section 55(b) sets forth the requirements for submitting comments to the Office of Administrative Law on the proposed emergency action. Comments must be in writing, must identify the topic of this rulemaking, and must be submitted directly to the Office of Administrative Law as follows:

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339  
Fax: (916) 323-6826  
e-mail: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

In addition, a copy of the comments must be transmitted to the Department's contact person for this rulemaking. To ensure prompt receipt and consideration of your comments, the Department requests that you transmit a copy either by e-mail to [cgrossgart@dir.ca.gov](mailto:cgrossgart@dir.ca.gov), or by fax, to the attention of Chris Grossgart, at (510) 286-7039.

### **AUTHORITY AND REFERENCE**

#### **Section 333**

Authority cited: Sections 54, 55 and 6319, Labor Code. Reference: Section 6319, Labor Code.

#### **Section 336**

Authority cited: Sections 54, 55, 6319, 6319.3, 6401.7 and 9060, Labor Code. Reference: Sections 6314.5, 6318, 6319, 6320, 6401.7, 6409.1, 6427-6432, 6434, 7320, 7321, 7321.5, 7381 and 9060, Labor Code.

### **INFORMATIVE DIGEST**

Labor Code section 6307 provides that the Division has the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary adequately to enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment.

Labor Code section 6317 authorizes the Division, after inspecting a place of employment, to issue citations to an employer for violations of Title 8 discovered during the inspection. Section 6317 also allows the Division to impose proposed civil penalties for the citations it issues. Labor Code section 6319 requires the Director of the Department of Industrial Relations to promulgate regulations governing the assessment of civil penalties for cited violations. In promulgating these regulations, the Director must consider, among other factors, whether the employer has timely abated the violations. Under the language of existing regulations, the Division must reduce the proposed civil penalty for cited violations by 50% at the time of issuance, on the presumption that an employer will abate the violations by the date the Division has fixed in the citation for abatement. (Title 8 § 336(e).) In other words, the Division grants the employer a 50% abatement credit *prospectively*, before an employer receives the citation or is required to abate the subject violative condition.

Effective January 1, 2015, the Legislature has amended Labor Code sections 6319 and 6320 to prohibit the Division from granting an abatement credit unless the employer has abated the violation while the Division's inspection is ongoing or unless the employer submits evidence of

abatement within 10 working days after the end of the period the Division has fixed for abatement in a citation.

These proposed emergency regulations would amend Section 336 of Title 8 to reflect these new abatement requirements, specifically:

1. Existing section 336(e) governs abatement credit for General and Serious violations. The Proposed Rulemaking would divide Subsection (e) into subsections (e)(1,) relating to abatement credits for General violations and subsection (e)(2,) relating to abatement credits for Serious violations. The proposed emergency regulations would delete provisions relating to the abatement of Serious violations from subsection (e)(1).
2. The proposed emergency regulations would add subsection (e)(2) to govern abatement credit for Serious citations. It would provide that, for Serious violations not listed in subsection (e)(3), the Division will not grant an abatement credit unless the employer has either: (a) abated the violation during the course of the Division's inspection and before the issuance of a citation; or (b) submitted to the Division a signed statement with supporting evidence showing abatement of the Serious violation within 10 working days after the end of the period the Division fixed for abatement in the citation.
3. Subsection (e)(3) of the proposed emergency regulations would list the types of Serious violations that would not be subject to an abatement credit, including: (a) Serious citations with high Extent and Likelihood modifiers; (b) citations classified as "Repeat Serious" and "Willful Serious;" (c) Serious violations respecting the use of a carcinogen; and (d) Serious violations causing death or serious injury, illness, or exposure as defined in Labor Code section 6302. Subsection (e)(3) contains no new regulatory requirements and merely re-organizes existing codified language for ease of reference.

The proposed emergency regulations would also make changes to Section 333 of Title 8. Under Section 333, if an employer fails to notify the Appeals Board in writing of its intention to contest a citation within 15 working days from the date it received a citation and civil penalty, then the citation and civil penalty are deemed a final order of the Appeals Board, not subject to review by any court or agency. The proposed emergency regulations would add the words "Final Order" to the title of Section 333. In addition, the proposed regulations would create an exception in the "final order rule" of Section 333 to allow the Division to modify the civil penalty of a citation pursuant to Section 336(e)(2) even if the citation has become a final order by operation of law, and would further specify that any such modification to the civil penalty would not be appealable to the Appeals Board.

**Consistence and Compatibility with Existing State Regulations:**

The Proposed Rulemaking is not inconsistent or incompatible with existing state regulations.

**Technical or Theoretical, or Empirical Studies, Reports, or Documents Relied on:**

None.

**Mandate on Local Agencies or School Districts:**

The Division has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

**FISCAL IMPACT STATEMENT**

- A. Cost or Savings to any state agency: NONE
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: NONE
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE
- D. Other nondiscretionary cost or savings imposed on local agencies: NONE
- E. Cost or savings in federal funding to the state: NONE

**STATEMENT CONFIRMING COMPLIANCE WITH GOVERNMENT CODE § 11346.1(a)(2)**

(Title 1 CCR section 50(a)(5)(A))

The Division has complied with the provisions of Government Code section 11346.1(a)(2), regarding the sending of notice of proposed emergency regulations action to every person who has filed a request for notice of regulatory action. The notice was sent electronically on January 15, 2016, to members and attendees of the Cal/OSHA Advisory Committee, as well as other members of the public who have requested notice of regulatory actions at least five working days prior to submission to the Office of Administrative Law.

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF OCCUPATIONAL HEALTH AND SAFETY

## SPECIFIC LANGUAGE

TITLE 8 of the CALIFORNIA CODE OF REGULATIONS  
Chapter 3.2. California Occupational Safety and Health Regulations  
Subchapter 1. Regulations of the Director of Industrial Relations  
Article 4. Proposed Penalty Procedure  
§333. Notice of Proposed Assessment of Civil Penalties  
§336. Assessment of Civil Penalties

### §333. Notice of Proposed Assessment of Civil Penalties; Final Order.

(a) Where a civil penalty is indicated, the Division shall after, or concurrent with the issuance of a citation, and within a reasonable time after the date the violation occurred, notify the employer by certified mail of the civil penalty proposed by the Division respecting the item(s) set forth as violation(s) in the citation. Any citation and/or Notice of Proposed Civil Penalty shall be deemed to be the final order of the Appeals Board, not subject to review by or appeal to any court or agency, unless within 15 working days from the date of the receipt of such citation or such notice of proposed civil penalty, the employer notifies the Appeals Board in writing of his intention to contest the citation and/or the civil penalty, with respect to violations alleged by the division, abatement periods, amount of proposed penalties, and the reasonableness of the changes required by the division to abate the condition.

(b) Notwithstanding subsection (a), the Division may modify the civil penalty of a citation pursuant to Section 336(e)(2), even if the citation has become a final order of the Appeals Board. The employer may not appeal such modification to the Appeals Board.

NOTE: Authority cited: Sections 54, 55 and 6319, Labor Code. Reference: Section 6319, Labor Code.

### §336. Assessment of Civil Penalties.

Civil penalties for Regulatory, General, Serious, Repeat, Willful, and Failure to Abate violations shall be assessed in the following manner:

#### (a) Regulatory Violation -

(1) In General - Any employer who commits any Regulatory violation (as provided in Section 334(a) of this article) shall be assessed a civil penalty of up to \$7000 for each such violation. Except as set forth in parts (2) through (6) of this subsection, a minimum proposed penalty of \$500, representing the gravity of the violation, shall be assessed against employers who commit Regulatory violations. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(2) For Carcinogens -A minimum proposed penalty of \$1,000 for all carcinogen standard regulatory violations, other than reporting use violations, representing the gravity of the violation, shall be assessed against the employers who commit such violations. The proposed penalty shall be adjusted for Size, Good Faith and History; however, an abatement credit shall not be granted.

(3) For Carcinogens Failure to Report Use. Any employer who violates a reporting requirement respecting the use of a carcinogen as defined in Title 8 of the California Code of Regulations section 330(f), shall be assessed a minimum proposed civil penalty of \$2,500. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(4) For Violation of Permit or Registration Requirements. Any employer who violates the permit requirements of article 2, Permits -Excavations, Trenches, Construction and Demolition, and The Underground Use of Diesel Engines in Work in Mines and Tunnels, commencing with section 341 of Title 8 of the California Code of Regulations, or the Registration requirements of article 2.5, Registration -Asbestos-Related Work commencing with section 341.6 of Title 8 of the California Code of Regulations, shall be assessed a minimum proposed civil penalty of \$1,250. The proposed penalty shall be adjusted for Size, Good Faith, and History; however, an abatement credit shall not be granted.

(5) For Violation of Elevator Permit and Posting Requirements. Any person owning or having custody, management, or operation of an elevator who operates any such elevator without a valid permit, or who fails to post the permit as required, may be assessed a civil penalty pursuant to the provisions of this article of up to \$1000.

(6) For Failure to Report Serious Injury or Illness, or Death of an Employee - Any employer who fails to timely report an employee's injury or illness, or death, in violation of section 342(a) of Title 8 of the California Code of Regulations, shall be assessed a minimum penalty of \$5,000.

(b) General Violation -Any employer who violates any occupational safety and health standard, order or special order and such violation is determined to be a General violation (as provided in section 334(b) of this article) may be assessed a civil penalty of up to \$7000 for each such violation.

Gravity of a General Violation -The Base Penalty of a General violation is determined by evaluating Severity (as provided in section 335(a)(1)(A) of this article). If the Severity is:

LOW -	The base Penalty shall be \$1,000.
MEDIUM -	The Base Penalty shall be \$1,500.
HIGH -	The Base Penalty shall be \$2,000.

The Base Penalty for the General violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW - 25% of the Base Penalty shall be subtracted.  
MEDIUM - No adjustment shall be made.  
HIGH - 25% of the Base Penalty shall be added.

The Base Penalty for the General violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW - 25% of the Base Penalty shall be subtracted.  
MEDIUM - No adjustment shall be made.  
HIGH - 25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

### (c) Serious Violation

(1) In General -Any employer who violates any occupational safety and health standard, order, or special order, and such violation is determined to be a Serious violation (as provided in section 334(c)(1) of this article) shall be assessed a civil penalty of up to \$25,000 for each such violation. Because of the extreme gravity of a Serious violation an initial base penalty of \$18,000 shall be assessed.

The Base Penalty for the Serious violation determined under this subsection is then subjected to an adjustment for Extent (as provided in section 335(a)(2) of this article). If the Extent is:

LOW - 25% of the Base Penalty shall be subtracted.  
MEDIUM - No adjustment shall be made.  
HIGH - 25% of the Base Penalty shall be added.

The Base Penalty for the Serious violation thus far determined is further subjected to an adjustment for Likelihood (as provided in section 335(a)(3) of this article). If Likelihood is:

LOW - 25% of the Base Penalty shall be subtracted.  
MEDIUM - No adjustment shall be made.  
HIGH - 25% of the Base Penalty shall be added.

The resulting figure is called the Gravity-based penalty.

(2) For Carcinogens -Any employer who violates any occupational safety and health standard, order, or special order respecting the use of a carcinogen, and such violation is determined to be a Serious violation (as provided in section 334(c)(4) of this article) shall be assessed a total civil penalty of \$2000 for each such violation. This penalty is not subject to adjustment.

(3) Serious Violation Causing Death or Serious Injury, Illness or Exposure -If the employer commits a Serious violation and the Division has determined that the violation caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, the penalty

shall not be reduced pursuant to this subsection, except the penalty may be reduced for Size as set forth in subsection (d)(1) of this section. The penalty shall not exceed \$25,000.

(4) Operation of an Elevator in an Unsafe Condition or in Violation of an Order Prohibiting Use.

Any person owning or having custody, management or operation of an elevator who operates or permits the operation of the elevator in a condition which is dangerous to life or the safety of any person, or who operates or permits the operation of the elevator in violation of any Order Prohibiting Use issued by the Division, may be assessed a civil penalty pursuant to the provisions of this article of up to \$2000.

(5) For Tower Cranes -Any employer who violates any tower crane standard, order or special order and such violation is determined to be a serious violation (as provided in section 334(c)(1) of this article) shall be assessed a penalty of \$2,000. The penalty shall not be subject to adjustment as set forth in subsections (d) and (e) of this section.

(d) Further Adjustment of Regulatory, General, and Serious Violations -Subject to the provisions of parts (5) through (9) of this subsection, the Gravity-based Penalty established under either subsection (a), (b) or (c) of this section, shall be appropriately adjusted by giving due consideration to the following factors:

(1) The Size of the Business If the Size of the Business (as provided under section 335(b) of this article) is:

10 or fewer employees	- 40% of the Gravity-based Penalty shall be subtracted.
11-25 employees	- 30% of the Gravity-based Penalty shall be subtracted.
26-60 employees	- 20% of the Gravity-based Penalty shall be subtracted.
61-100 employees	- 10% of the Gravity-based Penalty shall be subtracted.
More than 100 employees	- No adjustment shall be made.

(2) The Good Faith of the Employer -If the Good Faith of the Employer (as provided under section 335(c) of this article) is:

GOOD -	30% of the Gravity-based Penalty shall be subtracted.
FAIR -	15% of the Gravity-based Penalty shall be subtracted.
POOR -	No adjustment shall be made.

(3) The History of Previous Violations -If the employer's History of Compliance (as provided under section 335(d) of this article) is:

- GOOD - 10% of the Gravity-based Penalty shall be subtracted.
- FAIR - 5% of the Gravity-based Penalty shall be subtracted.
- POOR - No adjustment shall be made.

Following the preceding adjustments of the Gravity-based Penalty, the resultant penalty is termed Adjusted Penalty.

(4) If an employer cited for a violation of a safety and health provision within title 8 of the California Code of Regulations was, at the time of citation, making a good faith effort to abate the alleged violation, pursuant to written recommendations of a Consultant of the CAL/OSHA Consultation Service, the following penalty adjustments may apply:

(A) General Violation. All penalties assessed for such General violations may be waived by the Division.

(B) Serious Violation. All penalties for such Serious violations may be subject to an additional adjustment reducing the proposed penalty 50%.

(5) Serious Violations Respecting the Use of a Carcinogen -The penalty for any Serious violation respecting the use of a carcinogen as set forth in subsection (c)(2) of this section is not subject to adjustment pursuant to this subsection and shall not be otherwise reduced.

(6) Regulatory Violations of the Permit and Registration Requirements -The minimum penalty for any Regulatory violation of the permit or registration requirements as set forth in subsection (a)(4) of this section is \$250.

(7) Serious Violations Causing Death or Serious Injury, Illness or Exposure -Subject to the provisions of subsection (c)(3) of this section, the penalty for any Serious violation determined by the Division to have caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, shall not be adjusted pursuant to this subsection, except for Size set forth in part (1) of this subsection.

(8) Injury Prevention Program -The penalty for any Serious violation shall not be subject to adjustment pursuant to this subsection other than for Size as set forth in part (1) of this subsection where the employer does not have an operative injury prevention program as set forth in Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(9) False Declarations of Abatement -Subject to the provisions of subsection (e) of this section, where it is determined after reinspection that the employer has not complied with the abatement requirements of the Division and employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in part (1) of this subsection.

(10) No civil penalty shall be assessed against any new employer for a period of one year after the date the new employer establishes a business in the state for a regulatory or general violation of the Injury and Illness Prevention Program Standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board, if the employer has made a good faith effort to comply with the requirement set forth therein.

(11) No civil penalty shall be assessed against an employer who adopts, posts, and implements in good faith the Model Injury and Illness Prevention Program for Non-High-Hazard Employment prepared by the Division for a first violation of the Injury and Illness Prevention Program standard adopted pursuant to Labor Code section 6401.7 and applicable regulations of the California Occupational Safety and Health Standards Board.

(12) For an employer who commits a repeat violation (as provided under section 334(d) of this article), the penalty shall not be subject to adjustment pursuant to this subsection, other than for Size as set forth in part (1) of this subsection.

(e) Abatement Credit for General and Serious Violations –

(1) The Adjusted Penalty for General and Serious violations is reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The resultant penalty is termed Proposed Penalty. The following types of violations are not subject to an abatement credit: Violations classified as “Repeat General” or “Willful General” are not subject to an abatement credit.

(1) Violations designated as Repeat or Willful;

(2) Serious violations for which extent and likelihood are rated high;

(3) Serious violations respecting the use of a carcinogen; and

(4) Serious violation causing death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302.

(2) For Serious violations not listed in paragraph (3), the Division shall not grant an abatement credit unless the employer has done any of the following:

(A) Abated the Serious violation at the time of the initial or a subsequent visit during an inspection and prior to the issuance of a citation.

(B) Submitted a signed statement under penalty of perjury and supporting evidence, when necessary to prove abatement, if the signed statement and supporting evidence are received within 10 working days after the end of the period fixed in the citation for abatement.

(3) The following types of Serious violations are not subject to an abatement credit:

(A) Serious violations for which extent and likelihood are rated high;

(B) Serious violations designated as “Repeat Serious” or “Willful Serious;”

(C) Serious violations respecting the use of a carcinogen; and

(D) Serious violations causing death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302.

(f) Penalty for Failure to Abate Regulatory, General or Serious Violations -If the employer fails to abate the violation by the date permitted for its correction or fails to submit to the Division a signed statement of abatement of a violation within ten working days of the date set by the Division for correction of the violative condition, any abatement credit extended pursuant to subsection (e) of this Section shall be rescinded and this amount assessed as part of the failure to abate penalty. In addition, a penalty shall be assessed that is based upon the initial Gravity-based penalty for each calendar day that the previously cited violation continues unabated after expiration of the abatement period. Subject to the provisions of part (1) hereof, the Gravity-based penalty is reduced by the reevaluated adjustment factors. The adjustment factors of Size, Good Faith, and History shall be determined by evaluation of the circumstances at the time of the subsequent inspection when the failure to abate is discovered. The daily additional penalty for failure to abate a violation shall not exceed \$15,000.

#### Limitations:

- (1) Except (A) where the gravity of the violation is high and exposure to employees is continuous, or (B) the employer has exhibited a high degree of negligence in failing to correct the violation, the daily penalty for failure to abate a Regulatory or General violation may be further reduced up to 90% for the first 120 days the violation continues to exist and up to 50% thereafter where the violation does not bear a direct relationship on employee health and safety. The daily penalty for a Serious violation may be reduced up to 50% where the adjustment factors calculated pursuant to subsection (c) of this section are Low and the History and Good Faith calculated pursuant to subsection (d) of this section are Good.
- (2) When a violation consisted of a number of instances and upon subsequent inspection some instances are found to have been abated and others have not, the daily penalty shall be calculated in proportion to the extent that the violation has been abated.
- (3) Failure to Abate a Serious Violation Causing Death or Serious Injury, Illness or Exposure -If the employer fails to abate a Serious violation and the Division has determined that the failure to abate caused death or serious injury, illness, or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be adjusted pursuant to this subsection, except for Size as set forth in subsection (d)(1) of this section.
- (4) Failure to Abate a Serious Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury -If the employer fails to abate a serious violation of a crane standard, order, or special order and the Division has determined that the failure to abate caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$14,000 for each calendar day. The penalty is not subject to adjustment.
- (5) False Declaration of Abatement -If it is determined after reinspection that the employer has not complied with the abatement requirements of the Division, and the employer has previously submitted a statement affirming compliance therewith, the recomputed penalty shall not be adjusted pursuant to this subsection, except for Size pursuant to part (1) of subsection (d) of this section.

(g) Repeat Violation -

(1) In General -If a Regulatory, General, or Serious violation is repeated (as provided under section 334(d) of this article) the Proposed Penalty is adjusted upward as follows:

1st repeat - the Proposed Penalty is multiplied by two.

2nd repeat - the Proposed Penalty is multiplied by four.

3rd repeat - the Proposed Penalty is multiplied by ten.

The resultant penalty shall not exceed \$70,000.

(2) For Carcinogens -If a Serious violation respecting the use of a carcinogen or a Regulatory violation concerning a reporting requirement respecting the use of a carcinogen is repeated (as provided in section 334(d) of this article), the total civil penalty shall be as follows:

(A) For repeated Regulatory violations concerning a reporting requirement.

1st repeat - \$5,000 2nd repeat - \$10,000 3rd repeat - \$20,000

(B) For repeated Serious violations respecting the use of a carcinogen.

1st repeat - \$10,000 2nd repeat - \$20,000 3rd repeat - \$40,000

These penalties are not subject to adjustment.

(3) Repeated Violation Causing Death or Serious Injury, Illness or Exposure -The computation of the Proposed Penalty for a repeated violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(h) Willful Violation -If a Regulatory, General, or Serious violation is determined to be willful (as provided under section 334(e) of this article) the Proposed Penalty is adjusted upward as follows:

Regulatory, General and Serious -the Proposed Penalty is multiplied by five. However, the penalty for any willful violation shall not be less than \$5,000 and shall not exceed \$70,000.

(1) Willful Violation Causing Death or Serious Injury, Illness or Exposure -The computation of the Proposed Penalty for a willful violation shall not be subject to reduction, other than the Size pursuant to part (1) of subsection (d) of this section, where the violation is determined by the

Division to have caused death or serious injury, illness or exposure within the meaning of Labor Code section 6302.

(i) Serious Repeated or Willful Repeated Violation of Crane Standard, Order, or Special Order Causing Death or Serious Injury -If the employer commits a serious repeated or willful repeated violation of a crane standard, order, or special order, and the Division has determined that the violation caused death or serious injury as defined pursuant to Labor Code 6302, the penalty shall be \$140,000. This penalty is not subject to adjustment.

(j) Rounding of the Fractions Amounts of the civil penalties are rounded down to the next whole dollar during the calculation stages, and final figures are adjusted downward to the next lower five dollar (\$5) value.

(k) Multiple Violations Pertaining To A Single Hazard. When a single hazard is the subject matter of multiple violations resulting in civil penalties, the Division may, in its discretion, depart from the preceding criteria to mitigate the cumulative effect of such penalties.

(1) This subsection does not apply to any penalty assessed for a Serious, Willful or Repeated violation or a failure to abate a Serious violation where such violation or violations have been determined by the Division to have caused death or serious injury, illness or exposure pursuant to Labor Code section 6302. This subsection does not apply to any Regulatory, General or Serious violation where the employer does not have an operative injury prevention program as set forth in subsection (d) of this section.

Note: Authority cited: Sections 54, 55, 6319, 6319.3, 6401.7 and 9060, Labor Code. Reference: Sections 6314.5, 6318, 6319, 6320, 6401.7, 6409.1, 6427-6432, 6434, 7320, 7321, 7321.5, 7381 and 9060, Labor Code.