

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Industrial Relations**

**Regulatory Action:**

**Title 08, 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 Matter Number: 2015-0731-01**

**OAL Matter Type: Emergency Readopt (EE)**

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This action re-adopts emergency regulations adopted in emergency action 2015-0203-01 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 8/10/2015 and will expire on 11/10/2015. The Certificate of Compliance for this action is due no later than 11/9/2015.

Date: August 10, 2015



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**Mark Storm  
Senior Attorney**

**For: DEBRA M. CORNEZ  
Director**

Original: Christine Baker  
Copy: Christopher Grossgart

# EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS <b>Z-</b>	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2015-0731-01EE</b>
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For use by Office of Administrative Law (OAL) only

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**2015 JUL 31 A 9:06**  
OFFICE OF  
ADMINISTRATIVE LAW

**'AUG 10 2015**

**3:28 PM**

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

*Department of Industrial Relations*

*per agency request*

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)
<b>OAL USE ONLY</b>	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 Citation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0203-01 E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
	AMEND §§333, 336
	REPEAL
TITLE(S) 8	

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 checked="" 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 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) _____
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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 <i>Christine Baker</i>	DATE 7/30/2015
TYPED NAME AND TITLE OF SIGNATORY Christine Baker, Director of the Department of Industrial Relations	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**AUG 10 2015**

Office of Administrative Law

## **Department of Industrial Relations**

### **SPECIFIC LANGUAGE OF EMERGENCY REGULATIONS RE-ADOPTION**

**Title 8 of the California Code of Regulations  
Chapter 3.2. California Occupational Safety and Health Regulations (CAL/OSHA)  
Subchapter 1. Regulations of the Director of Industrial Relations  
Article 4. Proposed Penalty Procedure**

**§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.

**Title 8 of the California Code of Regulations  
Chapter 3.2. California Occupational Safety and Health Regulations (CAL/OSHA)  
Subchapter 1. Regulations of the Director of Industrial Relations  
Article 4. Proposed Penalty Procedure**

**§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.

HIGH -	25% of the Base Penalty shall be added.
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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.

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

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