State of California DEPARTMENT OF INDUSTRIAL RELATIONS Division of Workers' Compensation

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS

Subject Matter of Regulations: Administrative Penalties Pursuant to Labor Code § 5814.6

<u>TITLE 8, CALIFORNIA CODE OF REGULATIONS</u> <u>SECTIONS 10225 – 10225.2</u>

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133 and 5814.6, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 10225 Definitions

Section 10225.1 Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding these proposed modifications. <u>Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons</u>.

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator Department of Industrial Relations Division of Workers' Compensation Post Office Box 420603 San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on November 10, 2006**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: <u>dwcrules@hq.dir.ca.gov</u>.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 10225	Definitions
Section 10225.1	Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6

DOCUMENTS SUPPORTING THE RULEMAKING FILE

• Comments from various interested parties concerning the regulations have been added to the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

The new text is indicated by underlining, thus: <u>underlined language</u>.

Proposed Text Noticed for First 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed in April 2006, are indicated by double strike-through, thus: deleted language.

Additions to the regulatory text, as proposed in April 2006, are indicated by a double underline, thus: <u>added language</u>.

Proposed Text Noticed for Second 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as previously proposed, are indicated by bold, double strike-through, thus: **deleted language.**

Additions to the regulatory text, as previously proposed, are indicated by a bold double underline, thus: **<u>added language</u>**.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 10225 Definitions

Subdivision (l), the definition of "general business practice," was amended to state:

(*l*) "General business practice" means a pattern of violations of Labor Code section 5814 at a single adjusting location that can be distinguished by a reasonable person from an isolated event. The pattern of violations must occur in the handling of more than one claim. However, where a claim file with a violation of Labor Code section 5814 has been adjusted at multiple adjusting locations, that claim file may be considered when determining the general business practice of any of the adjusting locations where the **conduct that caused the** violation occurred even if the file has been transferred to a different adjusting location. The pattern also may be based on evidence of violations of Labor Code section 5814 for failure to comply with an earlier compensation order in more than one claim. The conduct may include a single practice and/or separate, discrete acts or omissions in the handling of more than one claim.

These words are added to clarify that when a claim file has been adjusted at more than one adjusting location, the relevant claims adjusting location is the one or ones where the conduct that caused the violations occurred.

Subdivision (s), the definition of "penalty award' was amended to state:

(s) "Penalty award" means a<u><u>a</u> <u>final</u> order or <u>final</u> award by a workers' compensation administrative law judge to pay penalties due to a violation of section 5814 of the Labor Code.</u>

This change was made to clarify that the penalty award or order must be a final award or order.

Modifications to Section 10225.1 Schedule of Administrative Penalties Pursuant to Labor Code § 5814.6

Subdivision (a) was revised to state:

(a) Administrative penalties shall only be imposed under this section based on violations of Labor Code section 5814, after more than one penalty awards haves been issued by a workers' compensation administrative law judge on or after June 1, 2004 based on conduct occurring on or after April 19, 2004 for unreasonable delay or refusal to pay compensation within a five year time period. The five year period of time shall begin on the date of issuance of any penalty award not previously subject to an administrative penalty assessment pursuant to Labor Code section 5814.6.

These changes refine the minimum prerequisites for imposing an administrative penalty under this section: the underlying conduct that is the basis of penalty award must have occurred on or after April 19, 2004; the penalty award must have issued on or after June 1, 2004; and there must be more than one penalty award within a five year period.

Subdivisions (f) and (g) have been deleted to be consistent with the change that the penalty awards must have issued on or after June 1, 2004 for conduct occurring on or after April 19, 2004. The subsequent subdivisions were re-lettered.

In subdivision (g)(1), the word "each" was changed to "a," and the word "additionally" was added to clarify that the penalties listed following (g)(1) will be in addition to the \$100,000 penalty listed in (g)(1).

In subdivision (g)(3), the words "or proper objection" were deleted. In subdivision (g)(4), the words "or deny" were deleted. These changes were made in response to comments that penalties may only be imposed for failure to provide benefits.

In subdivision (h), the word "adjust" was replaced with "mitigate" as the reasons listed will allow for a penalty to be lowered.