

STD. 400 (REV. 01-2013)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2013-1211-01N</b>	EMERGENCY NUMBER
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ENDORSED FILED IN THE OFFICE OF

2014 JAN 21 PM 3:14

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Department of Industrial Relations	AGENCY FILE NUMBER (If any)
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**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 checked="" 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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	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) Classification of Cal/OSHA Violations and Definitions	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)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 334
TITLE(S) 8	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

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 type="checkbox"/> Effective on filing with Secretary of State <input checked="" 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 (415) 557-0400	FAX NUMBER (Optional) (415) 557-0900	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 12/13/13
TYPED NAME AND TITLE OF SIGNATORY Christine Baker, Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED  
JAN 21 2014  
Office of Administrative Law

**NON-SUBSTANTIVE** (See instructions on reverse)  
**NOTICE PUBLICATION/REGULATORY SUBMISSION**

For use by Secretary of State only

STD. 400 (REV. 01-2013)

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NOTICE		REGULATIONS	
<b>AGENCY WITH RULEMAKING AUTHORITY</b>			<b>AGENCY FILE NUMBER (If any)</b>

2013 DEC 11 AM 10:09  
 OFFICE OF ADMINISTRATIVE LAW

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<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	<b>ADOPT</b>
	<b>AMEND</b> 334
<b>TITLE(S)</b> 8	<b>REPEAL</b>

**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 checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
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<b>7. CONTACT PERSON</b> Chris Grossgart	<b>TELEPHONE NUMBER</b> (415) 557-0400	<b>FAX NUMBER (Optional)</b> (415) 557-0900	<b>E-MAIL ADDRESS (Optional)</b> Grossgart, Chris@DIR
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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.**

<b>SIGNATURE OF AGENCY HEAD OR DESIGNEE</b> 	<b>DATE</b> 11/27/2013
<b>TYPED NAME AND TITLE OF SIGNATORY</b> CHRISTINE BAKER, Director D. Lachlan Taylor, Acting Director	

For use by Office of Administrative Law (OAL) only

§334. Classification of Violations and Definitions.

For purposes of penalty assessments, violations of occupational safety and health standards, violations of California Health and Safety Code Sections 2950 and 25910, orders, special orders and regulations are classified as follows:

(a) Regulatory Violation--is a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc.

(b) General Violation--is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.

(c) Serious Violation.

~~(1) A "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a violation, including, but not limited to, circumstances where there is a substantial probability that either of the following could result in death or great bodily injury:~~

~~(A) A serious exposure exceeding an established permissible exposure limit or~~

~~(B) A condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in the place of employment.~~

~~(2) Notwithstanding subsection (c)(1), a serious violation shall not be deemed to exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.~~

~~(3) As used in subsection (c)(1), "substantial probability" refers not to the probability that an accident or exposure will occur as a result of the violation, but rather to the probability that death or serious physical harm will result assuming an accident or exposure occurs as a result of the violation.~~

(1) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious.

(2) For purposes of a serious violation, the "actual hazard" may consist of, among other things:

(A) A serious exposure exceeding an established permissible exposure limit;

(B) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

(3) If the Division establishes a presumption pursuant to subdivision (c)(1) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

(A) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to the employer's:

1. Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards;
2. Procedures for discovering, controlling access to, and correcting the hazard or similar hazards;
3. Supervision of employees exposed or potentially exposed to the cited hazard;
4. Procedures for communicating to employees about the employer's health and safety rules and programs; and
5. Information that the employer wishes to provide, at any time before citations are issued, including, any of the following:
  - a. The employer's explanation of the circumstances surrounding the alleged violative events.
  - b. Why the employer believes a serious violation does not exist.
  - c. Why the employer believes its actions related to the alleged violative events were reasonable and responsible so as to rebut, pursuant to subdivision (c)(3), any presumption established pursuant to subdivision (c)(1).
  - d. Any other information that the employer wishes to provide.

(B) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(4) For Carcinogens—a 'serious violation' is a violation of any standard, order, or special order respecting the use of a carcinogen, as defined in 8 California Code of Regulations 330(f). However, the violation shall not be considered serious if the employer can demonstrate that he did not, and could not with the exercise of reasonable diligence, know of the presence of the violation or he can demonstrate that the Division should have determined that the violation was minor and resulted in no substantial health hazard.

(d) Repeat Violation

(1) General--is a violation where the employer has corrected, or indicated correction of an earlier violation, for which a citation was issued, and upon a later inspection is found to have committed the same violation again within a period of three years immediately preceding the latter violation. For the purpose of considering whether a violation is repeated, a repeat citation issued to employers having fixed establishments (e.g., factories, terminals, stores . . .) will be limited to the cited establishment; for employers engaged in businesses having no fixed establishments (e.g., construction, painting, excavation . . .) a repeat violation will be based on prior violations cited within the same Region of the Division.

(2) Field Sanitation Violations--Is a violation of the State Field Sanitation Standard, currently set forth in 8 CCR 3457, or of the Federal Field Sanitation Standard, currently set forth in 29 CFR 1928.110, where the employer has corrected, or indicated correction of an earlier violation, for which a citation was issued, and upon a later inspection is found to have committed the same violation within a period of five years immediately preceding the latter violation. For the purpose of considering whether a violation is repeated, a repeat violation will be based on prior violations cited within the State.

(e) Willful Violation--is a violation where evidence shows that the employer committed an intentional and knowing, as contrasted with inadvertent, violation, and the employer is conscious of the fact that what he is doing constitutes a violation of a safety law; or, even though the employer was not consciously violating a safety law, he was aware that an unsafe or hazardous condition existed and made no reasonable effort to eliminate the condition.

(f) Abatement Date--is the date by which the employer is allowed and required to correct the condition constituting the violation.

NOTE

Authority cited: Sections 54, 55 and 6319, Labor Code. Reference: Sections 6302(i), 6319, 6432 and 6712, Labor Code; and Sections 2950 and 25910, Health and Safety Code.