

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY Clear Print (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
Z-		2018-	1025-02 E

For use by Office of Administrative Law (OAL) only

2018 OCT 25 P 12:52
OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Department of Industrial Relations, Division of Occupational Safety and Health

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 <input type="checkbox"/> 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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE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) Recording and Reporting of Occupational Injuries and Illnesses	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

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
	REPEAL
Title 8, California Code of Regulations sections 14300.35 and 14300.41	
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 type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<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 Resubmittal of disapproved or withdrawn nonemergency filing (Gov.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 Resubmittal of disapproved or withdrawn emergency filing (Gov.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"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> File & Print
		<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 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 checked="" 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 Willie N. Nguyen	TELEPHONE NUMBER (510) 286-7348	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
---------------------------------------	------------------------------------	-----------------------	---------------------------

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.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10/24/2018
TYPED NAME AND TITLE OF SIGNATORY Juliann Sum, Chief	

**DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

California Code of Regulations

Title 8, Division 1, Chapter 7, Subchapter 1, Article 2, Sections 14300.35 and 14300.41.

Text of Modified Regulations

Language proposed to be added is underlined;

Language proposed to be deleted is in ~~striketrough~~;

§ 14300.35. Employee Involvement.

- (a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.
- (1) You must inform each employee of how he or she is to report ~~an~~ a work-related injury or illness to you.
- (2) You must provide ~~limited~~ access to your injury and illness records for your employees and their representatives: as described in paragraph (b)(2) of this section.
- (b) Implementation.
- (1) What must I do to make sure that employees report work-related injuries and illnesses to me?
- (A) You must set up a way for employees to report work-related injuries and illnesses promptly; and
- (B) You must tell each employee how to report work-related injuries and illnesses to you.
- (2) Do I have to give my employees and their representatives access to the injury and illness records required by this article?

Yes. Your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the injury and illness records required by this article, with some limitations, as discussed below.

(A) Who is an authorized employee representative?

An authorized employee representative is an authorized collective bargaining agent of employees.

(B) Who is a personal representative of an employee or former employee?

A personal representative is:

1. Any person that the employee or former employee designates as such, in writing; or
2. The legal representative of a deceased or legally incapacitated employee or former employee.

(C) If an employee or his or her representative asks for access to the Cal/OSHA Form 300 and annual summary when do I have to provide it?

When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored Cal/OSHA 300 forms or a current or stored annual summary for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant Cal/OSHA 300 forms and annual summaries by the end of the next business day.

Exception: If your establishment is in NAICS SIC-Code 781-5121, you must give the requester the information within 7-seven (7) calendar days.

(D) May I remove the names of the employees or any other information from the Cal/OSHA Form 300 before I give copies to an employee, former employee, or employee representative?

No. You must leave the names on the Cal/OSHA Form 300. However, to protect the privacy of injured and ill employees, you may not record the employee's name on the Cal/OSHA Form 300 for certain "privacy concern cases" as specified in Sections 14300.29(b)(6) through 14300.29(b)(9).

(E) If an employee or representative asks for access to the Cal/OSHA 301 Incident Report, when do I have to provide it?

1. When an employee, former employee, or personal representative asks for a copy of the Cal/OSHA Form 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the Cal/OSHA 301 Incident Report containing that information by the end of the next business day.

Exception: If your establishment is in NAICS SIC-Code 781-5121, you must give the requester the information within 7-seven (7) calendar days.

2. When an authorized employee representative asks for copies of the Cal/OSHA 301 Incident Reports or equivalent forms for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the

authorized employee representative within seven (7) calendar days but with the following personally identifying information deleted:

1. Name;
2. Address;
3. Date of birth;
4. Date of hire;
5. Gender;
6. Name of physician;
7. Location where treatment was provided;
8. Whether the employee was treated in an emergency room; and
9. Whether the employee was hospitalized overnight as an in-patient.

(F) May I charge for the copies?

No. You may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

(c) With the exception of provisions to protect the privacy of employees in subsections (b)(2)(D) and (b)(2)(E) of this section and in subsections (b)(6) through (b)(10) in Section 14300.29, nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

Note: Authority cited: Section 6410, Labor Code. Reference: Section 6410, Labor Code.

§ 14300.41. Annual OSHA Injury and Illness Survey.

(a) ~~Basic requirement. If you receive OSHA's annual survey form, you must fill it out and send it to OSHA or OSHA's designee, as stated on the survey form. You must report the following information for the year described on the form:~~

- ~~(1) the number of workers you employed; Annual electronic submission of Cal/OSHA injury and illness records by establishments with 250 or more employees. If your establishment had 250 or more employees at any time during the previous calendar year, and Article 2 of this subchapter requires your establishment to keep records, then you must electronically submit information from the Cal/OSHA Form 300A Summary of Work-Related Injuries and Illnesses that you keep under this part to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the forms.~~
- ~~(2) the number of hours worked by your employees; and Annual electronic submission of Cal/OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries. If your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in Appendix H for Title 8 Sections 14300 – 14300.48, then you must electronically submit information from Cal/OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.~~
- ~~(3) the requested information from the records that you keep under the provisions of this article. Electronic submission of records upon notification. Upon notification, you must electronically submit the requested information from your Cal/OSHA injury and illness records to OSHA or OSHA's designee.~~

(b) Implementation.

- ~~(1) Does every employer have to send data to routinely submit information from the Cal/OSHA injury and illness records to OSHA or its designee?~~

~~No., only two categories of employers must routinely submit information from their Cal/OSHA injury and illness records. Each year, OSHA or its designee sends injury and illness survey forms to employers in certain industries. In any year, some employers will receive an OSHA survey form and others will not. You do not have to send injury and illness data to OSHA or its designee unless you receive a survey form. First, if your establishment had 250 or more employees at any time during the previous calendar year, and Article 2 requires your establishment to keep records, then you must submit the required Cal/OSHA Form 300A information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in Appendix H for Title 8 Sections 14300 – 14300.48, then you must submit the required Cal/OSHA Form 300A information to OSHA once a year. Employers in these two categories must submit the required information by~~

the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms (for example, 2018 for the 2017 forms). If you are not in either of these two categories, then you must submit information from the injury and illness records to OSHA only if OSHA notifies you to do so for an individual data collection.

- (2) How quickly do I need to respond to an OSHA survey form? If I have to submit information under paragraph (a)(1) of this section, do I have to submit all of the information from the recordkeeping form?

You must send the survey reports to OSHA or its designee by mail or other means described in the survey form, within 30 calendar days, or by the date stated in the survey form, whichever is later.

Yes, you are required to submit all of the information from the Form 300A.

- (3) Do I have to respond to an OSHA survey form if I am normally exempt from keeping OSHA injury and illness records? Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section?

Yes. Even if you are exempt from keeping injury and illness records under Section 14300.1 to Section 14300.3, OSHA or its designee may inform you in writing that it will be collecting injury and illness information from you in the following year. If you receive such a letter, you must keep the injury and illness records required by this article and make a survey report for the year covered by the survey.

Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

- (4) Do I have to answer the OSHA survey form if I am located in a State Plan State? How will OSHA notify me that I must submit information from the injury and illness records as part of an individual data collection under paragraph (a)(3) of this section?

OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the Federal Register and the OSHA newsletter, and announcements on the OSHA Web site. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

Yes. All employers who receive survey forms must respond to the survey, even those in State Plan States.

- (5) Does this section affect the Division of Occupational Safety and Health's authority to inspect my workplace?

No. Nothing in this section affects the Division of Occupational Safety and Health's statutory authority to investigate conditions related to occupational safety and health.

- (6) How often do I have to submit the information from the injury and illness records?

If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms. If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as often as specified in the notification.

- (7) How do I submit the information?

You must submit the information electronically. OSHA will provide a secure Web site for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the Web site's location in the notification for the data collection.

- (8) Do I have to submit information if my establishment is partially exempt from keeping Cal/OSHA injury and illness records?

If you are partially exempt from keeping injury and illness records under §§ 14300.1 and/or 14300.2, then you do not have to routinely submit Article 2 information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the Cal/OSHA injury and illness records required by Article 2 and submit information as directed.

- (9) Do I have to submit information if I am located in a State Plan State?

Yes, the requirements apply to employers located in State Plan States.

- (10) May an enterprise or corporate office electronically submit Cal/OSHA injury and illness records for its establishment(s)?

Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (a)(1) or (2) of this section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) Reporting dates.

(1) In 2018, establishments required to submit under paragraph (a)(1) or (2) of this section must submit the required information according to the table in this paragraph (c)(1):

<u>Submission year</u>	<u>Establishments submitting under paragraph (a)(1) of this section must submit the required information from this form/these forms:</u>	<u>Establishments submitting under paragraph (a)(2) of this section must submit the required information from this form:</u>	<u>Submission deadline</u>
<u>2018</u>	<u>300A</u>	<u>300A</u>	<u>December 31, 2018</u>

(2) Beginning in 2019, establishments that are required to submit under paragraph (a)(1) or (2) of this section will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

Appendix H for Title 8 Sections 14300 – 14300.48 – Designated Industries for § 14300.41(a)(2)
Annual Electronic Submission of Cal/OSHA Form 300A Summary of Work-Related Injuries and
Illnesses by Establishments With 20 or More Employees but Fewer Than 250 Employees in
Designated Industries

<u>NAICS</u>	<u>Industry.</u>
<u>11</u>	<u>Agriculture, forestry, fishing and hunting.</u>
<u>22</u>	<u>Utilities.</u>
<u>23</u>	<u>Construction.</u>
<u>31-33</u>	<u>Manufacturing.</u>
<u>42</u>	<u>Wholesale trade.</u>
<u>4413</u>	<u>Automotive parts, accessories, and tire stores.</u>
<u>4421</u>	<u>Furniture stores.</u>
<u>4422</u>	<u>Home furnishings stores.</u>
<u>4441</u>	<u>Building material and supplies dealers.</u>
<u>4442</u>	<u>Lawn and garden equipment and supplies stores.</u>
<u>4451</u>	<u>Grocery stores.</u>
<u>4452</u>	<u>Specialty food stores.</u>
<u>4521</u>	<u>Department stores.</u>
<u>4529</u>	<u>Other general merchandise stores.</u>
<u>4533</u>	<u>Used merchandise stores.</u>
<u>4542</u>	<u>Vending machine operators.</u>
<u>4543</u>	<u>Direct selling establishments.</u>
<u>4811</u>	<u>Scheduled air transportation.</u>
<u>4841</u>	<u>General freight trucking.</u>
<u>4842</u>	<u>Specialized freight trucking.</u>
<u>4851</u>	<u>Urban transit systems.</u>
<u>4852</u>	<u>Interurban and rural bus transportation.</u>
<u>4853</u>	<u>Taxi and limousine service.</u>
<u>4854</u>	<u>School and employee bus transportation.</u>

<u>4855</u>	<u>Charter bus industry.</u>
<u>4859</u>	<u>Other transit and ground passenger transportation.</u>
<u>4871</u>	<u>Scenic and sightseeing transportation, land.</u>
<u>4881</u>	<u>Support activities for air transportation.</u>
<u>4882</u>	<u>Support activities for rail transportation.</u>
<u>4883</u>	<u>Support activities for water transportation.</u>
<u>4884</u>	<u>Support activities for road transportation.</u>
<u>4889</u>	<u>Other support activities for transportation.</u>
<u>4911</u>	<u>Postal service.</u>
<u>4921</u>	<u>Couriers and express delivery services.</u>
<u>4922</u>	<u>Local messengers and local delivery.</u>
<u>4931</u>	<u>Warehousing and storage.</u>
<u>5152</u>	<u>Cable and other subscription programming.</u>
<u>5311</u>	<u>Lessors of real estate.</u>
<u>5321</u>	<u>Automotive equipment rental and leasing.</u>
<u>5322</u>	<u>Consumer goods rental.</u>
<u>5323</u>	<u>General rental centers.</u>
<u>5617</u>	<u>Services to buildings and dwellings.</u>
<u>5621</u>	<u>Waste collection.</u>
<u>5622</u>	<u>Waste treatment and disposal.</u>
<u>5629</u>	<u>Remediation and other waste management services.</u>
<u>6219</u>	<u>Other ambulatory health care services.</u>
<u>6221</u>	<u>General medical and surgical hospitals.</u>
<u>6222</u>	<u>Psychiatric and substance abuse hospitals.</u>
<u>6223</u>	<u>Specialty (except psychiatric and substance abuse) hospitals.</u>
<u>6231</u>	<u>Nursing care facilities.</u>
<u>6232</u>	<u>Residential mental retardation, mental health and substance abuse facilities.</u>
<u>6233</u>	<u>Community care facilities for the elderly.</u>
<u>6239</u>	<u>Other residential care facilities.</u>

<u>6242</u>	<u>Community food and housing, and emergency and other relief services.</u>
<u>6243</u>	<u>Vocational rehabilitation services.</u>
<u>7111</u>	<u>Performing arts companies.</u>
<u>7112</u>	<u>Spectator sports.</u>
<u>7121</u>	<u>Museums, historical sites, and similar institutions.</u>
<u>7131</u>	<u>Amusement parks and arcades.</u>
<u>7132</u>	<u>Gambling industries.</u>
<u>7211</u>	<u>Traveler accommodation.</u>
<u>7212</u>	<u>RV (recreational vehicle) parks and recreational camps.</u>
<u>7213</u>	<u>Rooming and boarding houses.</u>
<u>7223</u>	<u>Special food services.</u>
<u>8113</u>	<u>Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance.</u>
<u>8123</u>	<u>Dry-cleaning and laundry services.</u>

Note: Authority cited: Section 6410, Labor Code. Reference: Section 6410, Labor Code.

**FINDING OF EMERGENCY
OF THE
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

**REGARDING THE CALIFORNIA LABOR CODE
CALIFORNIA CODE OF REGULATIONS
TITLE 8, DIVISION 1, CHAPTER 7, SUBCHAPTER 1
OCCUPATIONAL INJURY OR ILLNESS REPORTS AND RECORDS**

Government Code Section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

The Chief of the Division of Occupational Safety and Health (“the Division”) finds that the adoption of these proposed amendments is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

FINDING OF EMERGENCY

Basis for the Finding of Emergency

- On May 12, 2016, the federal Occupational Safety and Health Administration (“OSHA”) published its final rule to revise its Recording and Reporting Occupational Injuries and Illnesses regulation (29 Code of Federal Regulations part 1904). The amendments to Section 1904.41 of the federal Recording and Reporting of Occupational Injuries and Illnesses regulation required designated employers to submit electronically certain injury and illness data to OSHA via an online web portal. The final rule set a series of dates for the implementation of the electronic reporting requirements: by July 1, 2017, affected employers would be required to submit electronically their Form 300A data to OSHA; by July 1, 2018, affected employers would have to submit electronically all of the injury and illness data specified in the amended regulation to OSHA.
- On June 28, 2017, OSHA extended the original July 1, 2017, deadline for electronic submission of injury and illness data to December 1, 2017 to “provide the new administration an opportunity to review the new electronic reporting requirements prior to their implementation and allow affected entities sufficient time to familiarize themselves with the electronic reporting system, which will not be available until [August 1, 2017.]”

- On November 11, 2017, OSHA again extended the deadline for electronic submission of injury and illness data, this time moving the deadline back to December 15, 2017. OSHA also announced that employers in State Plan states, such as California, were not required to submit their summary data to OSHA at that time unless they were under federal jurisdiction.¹
- On January 2, 2018, OSHA announced that affected employers could begin to submit electronically their Calendar year 2017 Form 300A data to OSHA. OSHA extended the deadline to submit such data to July 1, 2018.² OSHA also announced that it was “not accepting Form 300 and 301 information at this time.” OSHA stated that “it will issue a notice of proposed rulemaking (NPRM) to reconsider, revise, or remove provisions of the “Improve Tracking of Workplace Injuries and Illnesses” final rule, including the collection of the Forms 300/301 data.”
- On April 30, 2018, OSHA, citing 29 USC § 667(c)(7), announced that affected employers in State Plan states, such as California, would now be required to submit electronically their Form 300A data to OSHA via its online web portal, even if the State Plan has not completed adoption of its own state rule.³
- Cal/OSHA operates under a “State Plan” approved by OSHA under 29 CFR § 1902 *et seq.* A State Plan is an OSHA-approved occupational safety and health program operated by an individual state instead of by OSHA. OSHA approves and monitors all State Plans and provides funding for those plans. If OSHA establishes a new or revised standard, a State Plan must adopt its own standard that is at least as effective as the new or revised federal standard. (See 29 USC § 667(c)(2).) With regard to OSHA’s standards governing employers’ duties to record and report occupational injuries or illnesses, a State Plan must adopt standards that are “substantially identical” to the federal standards. (See 29 CFR §§ 1902.3(j), 1902.7, and 1904.37(a).)
- Because OSHA has now made clear its intention to enforce OSHA’s Form 300A electronic reporting requirement on employers in State Plan states, California

¹ See “OSHA National News Release” (Nov. 22, 2017).
<https://www.osha.gov/news/newsreleases/national/11222017> (accessed May 10, 2018).

² See “Injury Tracking Application Electronic Submission of Injury and Illness Records to OSHA.”
<https://www.osha.gov/injuryreporting/index.html> (accessed May 10, 2018).

³ See “OSHA Trade Release” (Apr. 30, 2018) <https://www.osha.gov/news/newsreleases/trade/04302018>
 (accessed May 10, 2018).

must enact the proposed amendments at issue in this proposed emergency action. These proposed amendments are necessary so that California's injury and illness reporting requirements, which are set forth in 8 CCR section 14300.41, are "substantially similar" to the corresponding federal injury and illness reporting requirements.

- Should California fail to enact the proposed amendments to make its injury and illness reporting requirements "substantially similar" to the corresponding federal requirements, California would be at risk of federal OSHA withdrawing approval of its State Plan under 29 USC section 667(f). California is required by California Labor Code section 50.7(d) to "take all steps necessary to prevent withdrawal of approval for the state plan by the Federal government."
- Furthermore, should California fail to enact the proposed amendments to make its injury and illness reporting requirements "substantially similar" to the corresponding federal requirements, California would be at risk of federal OSHA exercising its authority under its Operational Status Agreement with the Division. Federal OSHA could invoke its authority under the Operational Status Agreement to take enforcement action in the state, arguing that California's injury and illness reporting standard is not as effective as federal law, or that California is not fully or effectively able to enforce the new federal injury and illness reporting requirements. (See Operation Status Agreement, Sections V(b) and (c).)⁴
- Since OSHA's April 30, 2018, announcement of its intention to enforce the Form 300A electronic reporting requirement in State Plan states, California employers have expressed considerable confusion about their obligations under the federal OSHA injury and illness reporting regulation. Passing a corresponding regulation that would specify California's injury and illness reporting requirements is necessary to provide clear guidance to employers in California.

AUTHORITY AND REFERENCE CITATIONS

Section 14300.35

Authority cited: Section 6410, Labor Code. Reference: Section 6410, Labor Code.

⁴ The Operational Services Agreement is accessible on-line at: <https://www.dir.ca.gov/dosh/documents/FED-OSHA-CA-Operational-Status-Agreement-signed-2014.04.30.pdf>

Section 14300.41

Authority cited: Section 6410, Labor Code. Reference: Section 6410, Labor Code.

NOTE: Under California Labor Code § 50.7, the Department of Industrial Relations is the state agency designated to administer the California Occupational Safety and Health Act of 1973 (Cal. Lab. Code § 6300 *et seq.*) The California Division of Labor Statistics and Research (“DLSR”), formerly a division within the Department of Industrial Relations, promulgated 8 CCR §§ 14300.35 and 14300.41. These regulations were promulgated by DLSR under the authority of California Labor Code §§ 50.7 and 6410 to fulfill the federal mandate established by 29 CFR §§ 1902.3(j); 1902.7, and 1904.37(a) that California’s occupational injury and illness recording and reporting requirements under its State plan be “substantially identical” to the federal requirements.

In 2012, Senate Bill 1038 abolished DLSR and amended Labor Code § 150 by transferring its responsibilities under Chapter 7, Subchapter 1, Article 1 of Title 8 of the California Code of Regulations (commencing with Section 14000) to the Division. Labor Code § 150(b), as amended, provides:

To the extent not in conflict with this or any other section, on the date this subdivision becomes operative, the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 1 (commencing with Section 14000) and Subchapter 2 (commencing with Section 14900) of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Occupational Safety and Health and the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 3 (commencing with Section 16000) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Labor Standards Enforcement.

The Division is now proposing to amend Sections 14300.35 and 14300.41 of Title 8 of the California Code of Regulations under the authority provided in Sections 150(b) and 6410 of the Labor Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The federal Occupational Safety and Health Act of 1970 (29 USC § 651 *et seq.*) covers most private sector employers and their employees in all 50 states either directly through the federal Occupational Safety and Health Administration (“OSHA”) or through a “State plan” approved by OSHA under 29 CFR 1902 *et seq.* A State plan is an OSHA-approved occupational safety and health program operated by an individual state instead of by OSHA. OSHA approves and monitors all State plans and provides funding for those plans. If OSHA establishes a new or revised standard, a State plan

must adopt its own standard that is at least as effective as the new or revised federal standard within six months. With regard to OSHA's standards governing employers' duties to record and report occupational injuries or illnesses, a State plan must adopt standards that are "substantially identical" to the federal standards. (See 29 CFR §§ 1902.3(j), 1902.7, and 1904.37(a).)

On May 12, 2016, OSHA issued a final rule amending the requirements for employers to record and report occupational injuries and illnesses set forth in 29 CFR § 1904.41. These amendments require affected employers to submit electronically certain injury and illness records to OSHA through an online web portal. OSHA delayed the deadline for compliance with the requirements several times, and on January 2, 2018, announced that its online portal was now active and that OSHA would now receive Form 300A data from affected employers. OSHA extended the deadline to submit the required Form 300A data to July 1, 2018.

On April 30, 2018, OSHA announced that affected employers in State Plan states, such as California, would now be required to submit electronically their Form 300A data to OSHA via its online web portal, even if the State Plan has not completed adoption of its own state rule.

DLSR previously promulgated Section 14300.41 of Title 8 of the California Code of Regulations to ensure that California's occupational injury and illness recording and reporting requirements for employers were "substantially identical" to the federal standard described above. OSHA has issued a final rule amending the corresponding federal standard. Because the Division has assumed the rulemaking authority for the corresponding standards in California, it must now amend 8 CCR section 14300.41 to ensure that it remains "substantially identical" to the federal regulations. The Division must also make changes to 8 CCR section 14300.35 (1) to clarify existing requirements that employers inform their employees how to report work-related injuries and illnesses and that employers make certain injury and illness records available to their employees and (2) to conform the references to industry codes with other previously amended Title 8 regulations. The minor proposed changes to 8 CCR section 14300.35 are declarative of existing law and do not have any regulatory effect.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON

The Division has relied upon the following documents as part of this emergency action:

- Improve Tracking of Workplace Injuries and Illnesses; Final Rule, 81 Fed. Reg. 92 (May 12, 2016);
- OSHA National News Release (Nov. 22, 2017).
<https://www.osha.gov/news/newsreleases/national/11222017> (accessed May 10, 2018);

- Injury Tracking Application Electronic Submission of Injury and Illness Records to OSHA. <https://www.osha.gov/injuryreporting/index.html> (accessed May 10, 2018);
- OSHA Trade Release (Apr. 30, 2018) <https://www.osha.gov/news/newsreleases/trade/04302018> (accessed May 10, 2018).

SUMMARY OF PROPOSED REGULATIONS

§ 14300.35. Employee Involvement.

The proposed amendments of 8 CCR § 14300.35 clarifies existing requirements regarding an employer's obligation to inform workers how to report work-related injuries and to make available certain injury and illness data. The proposed amendments also conform the references to industry codes with other previously amended Title 8 regulations.

The proposed amendments would make the following specific changes to Section 14300.35:

- The phrase "a work-related" is being added to subsection (a)(1) to track the language from 29 CFR § 1904.35(a)(1).
- In subsection (a)(2), the word "limited" is being deleted, and the phrase "as described in paragraph (b)(2) of this section" is being added.
- In subsections (b)(2), subparagraphs (C) and (E), the SIC Code (or "Standard Industry Code") is being replaced by the NAICS Code (or "North American Industry Classification System" code) for the industry identified in the exception. A formatting change is also being made by adding the word "seven" before the numeral 7 in the phrase "seven (7) calendar days."

§ 14300.41. Annual OSHA Injury and Illness Survey.

29 CFR Section 1904.37(a) requires a State plan to adopt rules regarding employer recording and reporting of occupational injuries and illness that are "substantially identical" to the federal regulations. The proposed amendment of 8 CCR Section 14300.41 would generally track the language and format of its corresponding federal counterpart, 29 CFR Section 1904.41

The Proposed Rulemaking would make the following specific changes to Section 14300.41:

- Subsection (a)(1) is being amended to require employers that had 250 or more employees at any time during the previous calendar year and who are required to keep records to submit electronically certain occupational injury and illness data to OSHA once per year by the date listed in Section 14300.41(c). The language of this proposed amendment tracks federal OSHA's current requirements.
- Subsection (a)(2) is being amended to require employers in designated industries that had 20 to 249 employees at any time during the previous calendar year to submit electronically certain occupational injury and illness data to OSHA once per year by the date listed in Section 14300.41(c). The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(a)(2).
- Subsection (a)(3) is being amended to require employers to submit occupational injury and illness records to OSHA if notified by OSHA to do so. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(a)(3).
- Subsection (b)(1) is being amended to specify which categories of employers must routinely submit their occupational injury and illness data to OSHA. If an employer has 250 or more employees at any time during the preceding calendar year, and is required to keep records, then the employer must submit information on its Form 300A to OSHA once a year. Additionally, if an employer has between 20 and 249 employees and is classified as an industry listed in Appendix H, then it must submit information on its Form 300A to OSHA once a year. Employers who do not fall in either of the preceding categories must submit information from injury and illness records to OSHA only in response to a request from OSHA. The language of this proposed amendment tracks current federal OSHA requirements.
- Subsection (b)(3) is being amended to specify that part-time, seasonal, and temporary workers are included in the count of an employer's number of employees that triggers the requirement to report occupational injury and illness data to OSHA. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(3).
- Subsection (b)(4) is being amended to specify that, if OSHA intends to notify an employer that it must submit occupational injury and illness data as required under Subsection (a)(3), OSHA will notify that employer by mail. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(4).
- Subsection (b)(6) would be added to specify the frequency with which an affected employer must submit its occupational injury and illness data to OSHA. If an

employer is required to submit information under paragraph (a)(1) or (a)(2) of Section 14300.41, then it must submit the information once a year. If the employer is submitting information because OSHA notified it to submit information as part of an individual data collection under paragraph (a)(3) of Section 14300.41, then it must submit as often as specified in the notification received. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(5).

- Subsection (b)(7) would be added to specify how an affected employer must submit its occupational injury and illness data to OSHA. It would specify that employers are required to submit the information electronically through a secure website provided by OSHA. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(6).
- Subsection (b)(8) would be added to specify that a partially exempt employer is not required to submit its occupational injury and illness data to OSHA unless OSHA notifies the employer in writing that it must submit such information. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(7).
- Subsection (b)(9) would be added to specify that an affected employer located in a State Plan State (like California) must submit its occupational injury and illness data to OSHA as required under this amended regulation. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(8).
- Subsection (b)(10) would be added to specify that an enterprise or corporate office of an affected employer may submit the occupational injury and illness data for the affected employer to OSHA. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(9).
- Subsections (c)(1) and (2) are added to specify the reporting date deadlines for affected employers to submit their occupational injury and illness data to OSHA. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(c)(1) and (2).
- Appendix H for Title 8 Sections 14300-14300.48 is added to specify which industries are included in the reporting requirements set forth in Subsection (a)(2) for employers that had 20 to 249 employees at any time in the previous calendar year. The language of this proposed appendix tracks the language of Appendix A to Subpart E of 29 CFR Section 1904.41.

LOCAL MANDATE

The proposals do not impose a mandate on local agencies or school districts. The Division has determined that the proposals do not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because they do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 or Article XIII B of the California Constitution.

The California Supreme Court has established that a "program" within the meaning of Section 6 or Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed amendments do not require any local agency to carry out the governmental function of providing services to the public, nor do they impose unique requirements on local governments that do not apply generally to all entities in the state.

Furthermore, any costs associated with the recording and reporting of occupational injuries and illnesses required by the proposed amendments are costs mandated by the federal government. As such, even if the proposed amendments were held to constitute a "new program or higher level of service of an existing program" under Section 6 of Article XIII B of the California Constitution, any associated costs would not be considered costs mandated by the state. (See Cal.Gov.Code § 17556(c).)

FISCAL IMPACT

Costs or Savings to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Costs or savings to any state agency: The cost to an individual state agency to comply with the proposals will be less than or equal to \$11.13 per year. There will be no savings.

Other nondiscretionary costs or savings imposed on local agencies: The cost to an individual local agency to comply with the proposals will be less than or equal to \$11.13 per year. There will be no savings.

Costs or savings in federal funding to the State: None.

HOUSING COSTS

The proposals will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

Although the Proposed Rulemaking will directly affect businesses statewide that have employees, the Division anticipates that the statewide adverse economic impact will be insignificant. The Division anticipates that the proposals will have no effect on the ability of California businesses to compete with business in other states because all Federal OSHA states and other state-plan states will have to adopt substantially identical requirements.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Creation or Elimination of Jobs Within California: The Division concludes that it is unlikely that the proposals will either create or eliminate jobs within California.

Creation of New Business, Elimination of Existing Businesses, or Expansion of Businesses Currently Doing Business in California: The Division concludes that it is unlikely that the proposed amendments will: (1) create new businesses in California; (2) eliminate any existing businesses in California; or (3) result in the expansion of businesses currently doing business in California.

Benefits of the Proposed Amendments to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposals will benefit worker safety and health in California. The electronic data-reporting provisions in the proposals will provide more timely and accurate reporting for the occupational injury and illness data that employers are required to record and report under Article 2. These provisions expand OSHA's access to timely, establishment-specific occupational injury and illness data, thus allowing OSHA (and Cal/OSHA) to direct more of its enforcement and compliance assistance resources to those establishments where workers are at greatest risks.

The public disclosure of the electronic data submission required by the proposals could also lead to safer workplaces for workers. The public disclosure of this information could:

- Encourage employers to abate hazards to prevent occupational injuries and illnesses to their workers so as to preserve their reputations as good places to work or do business with;

- Allow establishments to gauge the effectiveness of their injury and illness prevention programs by comparing their occupational injury and illness rates with those of comparable establishments;
- Allow investors to compare occupational injury and illness rates among competing establishments when looking for investment opportunities;
- Allow members of the public to make more informed decisions on what businesses to patronize based on competing establishments' ability to address workplace hazards impacting their workers; and
- Provide better information to job-seekers regarding the occupational injury and illness rates of prospective employers.

The proposals will not otherwise significantly benefit the health and welfare of California's residents, and will not likely benefit California's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Division has determined that the proposed amendments will have some economic impacts on covered employers, but that these economic impacts will not be significantly adverse.

During its rulemaking process that lead to the May 12, 2016 final rule, OSHA conducted an economic analysis to determine the economic impact on employers to comply with the new requirement to report injury and illness data electronically. According to OSHA, the amendments in their final rule made the following four changes to the prior recording and reporting requirements in 29 CFR, Part 1904:

- Establishments that are required to keep injury and illness records under part 1904 and that had 250 or more employees in the previous year, must electronically submit the required information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee, on an annual basis.
- Establishments that are required to keep injury and illness records under part 1904, that had 20 to 249 employees in the previous year, and that are in certain designated industries, must electronically submit the required information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee, on an annual basis.
- Employers who receive notification from OSHA, must electronically submit the requested information from their injury and illness records to OSHA or OSHA's designee, with any such notification subject to the approval process established by the Paperwork Reduction Act.

OSHA's final rule did not change an employer's obligation to complete and maintain occupational injury and illness records, nor did it change the recording criteria for the records.

OSHA determined that an employer's electronic submission of occupational injury and illness data to OSHA "would be a relatively simple and quick matter" involving, in most cases, these basic steps:

- (1) Logging on to OSHA's web-based submission system;
- (2) entering basic establishment information into the system (the first time only);
- (3) copying the required injury and illness information from the establishment's records into the electronic submission forms; and
- (4) hitting a button to submit the information to OSHA.

OSHA's economic analysis of its final rule determined that the average cost to employers to comply with the electronic reporting of Form 300A data would be \$11.13 per year.⁵

**STATEMENT OF CONFIRMATION OF
MAILING OF FIVE-DAY EMERGENCY NOTICE**
(Title 1, CCR section 50(a)(5)(A))

The Division of Occupational Safety and Health sent notice of the proposed emergency action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulations to the Office of Administrative Law in accordance with the requirements of Government Code section 11346.1(a)(2).

⁵ OSHA arrived at these cost estimates by multiplying the compensation per hour, including wage and fringe benefits, of the employer's personnel expected to perform the task of electronic submission to OSHA by the time required for the electronic submission. In its calculation, OSHA identified the occupational class of "Industrial Health and Safety Specialists" as the representative class of workers who would be expected to transmit electronically the injury and illness data to OSHA. This class of workers had an estimated total compensation (wages and benefits) of \$48.78 per hour. OSHA then determined the amount of time that would be needed per year for covered employers to submit the electronic information.