

June 12, 1996

WHS 96-3

TO: COUNTY AGRICULTURAL COMMISSIONERS

SUBJECT: TITLE 8 SECTIONS CITED IN TITLE 3,  
SECTION 6720

Title 3 California Code of Regulations (CCR), section 6720(c), lists those sections of Title 8, the Cal/OSHA regulations, that may be considered equivalent to specific sections of pesticide regulations in Title 3 for specified antimicrobial pesticides.

Since the adoption of these provisions, we have been working to provide you with the text of those sections. This effort has been hampered by copyright provisions of readily available versions. We have prepared the attached regulation extract to assist you in the interpretation of compliance with the provisions of section 6720. This extract should be used together with the instructions and procedures previously given in ENF 94-016 and ENF 94-041 when conducting antimicrobial investigations.

If an employer has specific questions about provisions of the Cal/OSHA regulations, you should refer him or her to the nearest Cal/OSHA consultation office for further information.

If you have questions about the application of these Cal/OSHA regulations to section 6720, please contact

COUNTY AGRICULTURAL COMMISSIONERS  
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the Senior Pesticide Use Specialist serving your  
county.

Sincerely,

**[Original signed by John M. Donahue]**

John M. Donahue, Chief  
Worker Health and Safety Branch  
(916) 445-4222

Attachment

cc: Daniel J. Merkley

**1993 Extracts**  
from the  
**California Code of Regulations**  
**Title 8. Industrial Relations**

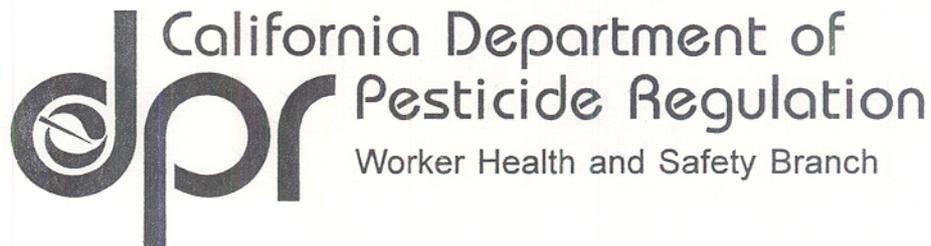
**Purpose**

This document contains those sections of Title 8 CCR cited in Title 3 CCR section 6720 as equivalent to compliance with specific sections of pesticide regulations with respect to

**sanitizers**  
**disinfectants**  
**medical sterilants**  
**pool and spa chemicals**

This document is provided for information only. The official version should be relied upon for any legal questions or to verify that no changes have occurred.

compiled by the



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**3200. Purpose.**

To fulfill the expressed social public policy of the State of California set forth in Article XX, Section 21 of the Constitution, to make full provision for securing safety in places of employment, these General Industry Safety Orders are promulgated for the guidance of employers and employees alike. Compliance with these orders may not in itself prevent occupational injuries or diseases, but will, it is believed, provide a safe environment which is a fundamental prerequisite in controlling injuries. Every employer should provide his supervisory staff with a copy of these orders and assure himself that each supervisor is familiar with those sections pertaining to the operations under his supervision.

NOTE: Authority cited for Section 3200 to 4207, inclusive: Sections 6312 and 6500, Labor Code. Additional authority cited: Section 6502 and Section 142.3, Labor Code. Issuing Agency: Division of Industrial Safety.

**3202. Application.**

(a) These orders establish minimum standards and apply to all employments and places of employment in California as defined by Labor Code Section 6303; provided, however, that when the Occupational Safety and Health Standards Board has adopted or adopts safety orders applying to certain industries, occupations or employments exclusively, in which like conditions and hazards exist, those orders shall take precedence wherever they are inconsistent with the General Industry Safety Orders hereinafter set forth.

NOTE: Unless otherwise designated in this subchapter, the phrase "division" refers to the current Division of Occupational Safety and Health or any of its predecessors including the former Division of Industrial Safety or the Division of Occupational Safety and Health Administration. Reference to the former Division of Industrial Safety or Division of Occupational Safety and Health Administration in these orders is meant to refer to their successor, the Division of Occupational Safety and Health, or any subsequent successor agency.

(b) After the date on which these Orders become effective, all installations shall conform to these Orders. EXCEPTION: (1) Existing installations which are in compliance with safety orders, or variations therefrom, in effect prior to the effective date of these safety orders, unless the hazard presented by the installation or equipment is, in the judgment of the Chief of the Division, of such severity as to warrant control by the application of the applicable sections of these orders.

(2) Facsimiles, replicas, reproductions, or simulations when used for exhibition purposes when such compliance would be detrimental to their use for such purposes unless the hazard presented by the installation is, in the judgment of the Chief of the Division, of such severity as to warrant control by the application of the applicable sections of these Orders.

(c) Regulations herein affecting building standards, apply to any building, or building alteration, or building modification for which construction is commenced after the effective date of the regulations. Date of commencement of construction, for the purpose of this section, shall be:

- (1) The advertising date for invitation of bids for State and local government projects.
- (2) The building permit issuance date for other projects.

(d) Nothing contained in these regulations shall be considered as abrogating the provisions relating to public safety of any ordinance, rule or regulation of any governmental agency, providing such local ordinance, rule or regulation is not less stringent than these minimum standards.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code; and Section 18943(c), Health and Safety Code.

**3203. Injury and Illness Prevention Program**

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

- (1) Identify the person or persons with authority and responsibility for implementing the Program.
- (2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

(3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with

this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.

EXCEPTION: Employers having fewer than 10 employees shall be permitted to communicate to and instruct employees orally in general safe work practices with specific instructions with respect to hazards unique to the employees' job assignments as compliance with subsection (a)(3).

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

(A) When the Program is first established;

EXCEPTION: Those employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with previously existing section 3203.

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

(5) Include a procedure to investigate occupational injury or occupational illness.

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

(A) When observed or discovered; and

(B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

(7) Provide training and instruction:

(A) When the program is first established;

EXCEPTION: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in section 3203.

(B) To all new employees;

(C) To all employees given new job assignments for which training has not previously been received;

(D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;

(E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,

(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

(b) Records of the steps taken to implement and maintain the Program shall include:

(1) Records of scheduled and periodic inspections required by subsection (a)(4) to identify unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe conditions and work practices that have been identified and action taken to correct the identified unsafe conditions and work practices. These records shall be maintained for three (3) years; and

EXCEPTION: Employers with fewer than 10 employees may elect to maintain the inspection records only until the hazard is corrected.

(2) Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for three (3) years.

EXCEPTION no. 1: Employers with fewer than 10 employees can substantially comply with the documentation provision by maintaining a log of instructions provided to the employee with respect to the hazards unique to the employees' job assignment when first hired or assigned new duties.

EXCEPTION no. 2: Training records of employees who have worked for less than one (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon termination of employment.

EXCEPTION no. 3: For Employers with fewer than 20 employees who are in industries that are not on a designated list of high-hazard industries established by the Department of Industrial Relations (Department) and who have a Workers' Compensation Experience Modification Rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries on a designated list of low-hazard industries established by the Department, written documentation of the Program may be limited to the following requirements:

A. Written documentation of the identity of the person or persons with authority and responsibility for implementing the program as required by subsection (a)(1).

B. Written documentation of scheduled periodic inspections to identify unsafe conditions and work practices as required by subsection (a)(4).

C. Written documentation of training and instruction as required by subsection (a)(7).

EXCEPTION no. 4: Local governmental entities (any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement) are not required to keep records concerning the steps taken to implement and maintain the Program.

NOTE 1: Employers determined by the Division to have historically utilized seasonal or intermittent employees shall be deemed in compliance with respect to the requirements for a written Program if the employer adopts the Model Program prepared by the Division and complies with the requirements set forth therein.

NOTE 2: Employers in the construction industry who are required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the Division, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to the employee's job duties.

(c) Employers who elect to use a labor/management safety and health committee to comply with the communication requirements of subsection (a)(3) of this section shall be presumed to be in substantial compliance with subsection (a)(3) if the committee:

(1) Meets regularly, but not less than quarterly;

(2) Prepares and makes available to the affected employees, written records of the safety and health issues discussed at the committee meetings and, maintained for review by the Division upon request. The committee meeting records shall be maintained for three (3) years;

(3) Reviews results of the periodic, scheduled worksite inspections;

(4) Reviews investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submits suggestions to management for the prevention of future incidents;

(5) Reviews investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspection and investigation to assist in remedial solutions;

(6) Submits recommendations to assist in the evaluation of employee safety suggestions; and

(7) Upon request from the Division, verifies abatement action taken by the employer to abate citations issued by the Division.

NOTE: Authority and reference cited: Sections 142.3 and 6401.7, Labor Code.

### **3204. Access to Employee Exposure and Medical Records.**

(a) PURPOSE: The purpose of this section is to provide employees and their designated representatives and authorized representatives of the Chief of the Division of Occupational Safety and Health (DOSH) a right of access to relevant exposure and medical records. Access by employees, their representatives, and representatives of DOSH is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this section, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this section is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

(b) Scope and Application.

(1) This section applies to each employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

(2) This section applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

(3) This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner by the employer, both on an in-house and on a contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which records are made or maintained.

(c) Definitions.

(1) **Access** means the right and opportunity to examine and copy.

(2) **Analysis Using Exposure or Medical Records** means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

(3) **Designated Representative** means any individual or organization to whom an employee gives written authorization to exercise a right of access. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative for the purpose of access to employee exposure records and analyses using exposure or medical records, but access to an employee's medical records requires the employee's written consent.

(4) **Employee** means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. For the purpose of this section, a deceased or legally incapacitated employee's legal representative may exercise all of the employee's rights under this section.

(5) **Employee Exposure Record** means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

(A) Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

(B) Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

(C) Material safety data sheets indicating that the material may pose a hazard to human health; or

(D) In the absence of (A), (B) or (C) above, a record, such as a chemical inventory or any other record, which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent and where and when the toxic substance or harmful physical agent was used.

(6) **Employee Medical Record** means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician.

(A) Employee medical record includes the following:

1. Medical and employment questionnaires or histories (including job description and occupational exposures);

2. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a base-line or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record");

3. Medical opinions, diagnoses, progress notes, and recommendations;

4. First-aid records;

5. Descriptions of treatments and prescriptions; and

6. Employee medical complaints.

(B) Employee medical record does not include medical information in the form of:

1. Physical specimens (e.g. blood or urine samples) which are routinely discarded as a part of normal medical practice; or

2. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

3. Records created solely in preparation for litigation which are protected from discovery under the applicable rules of procedure or evidence; or

4. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

(7) **Employer** means a current employer, a former employer, or a successor employer.

(8) **Exposure** or **Exposed** means employee subjection to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

(9) **Health Professional** means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist providing medical or other occupational health services to exposed employees.

(10) **Record** means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

(11) **Specific Chemical Identity** means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

(12) **Specific Written Consent** means

(A) A written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;
2. The date of the written authorization;
3. The name of the individual or organization that is authorized to release the medical information;
4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for release of the medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year). —

(B) A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization.

(C) A written authorization may be revoked in writing prospectively at any time.

(13) **Toxic Substance** or **Harmful Physical Agent** means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo- or hyperbaric pressure, etc.) which:

(A) Is regulated by any California or Federal law or rule due to a hazard to health;

(B) Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See Appendix B);

(C) Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to, the employer; or

(D) Is the subject of a material safety data sheet kept by or known to the employer which indicates that the material may pose a hazard to human health.

(14) **Trade Secret** means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

(d) Preservation of Records.

(1) Unless a specific occupational safety and health regulation provides a different period of time, each employer shall assure the preservation and retention of records as follows:

(A) Employee Medical Records. The medical record for each employee shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that the following types of records need not be retained for any specific period:

1. Health insurance claims records maintained separately from the employer's medical program and its records;

2. First aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records; and

3. The medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

(B) Employee Exposure Records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

1. Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results are retained for at least thirty (30) years;

2. Material safety data sheets shall be retained as necessary to comply with the provisions of section 5194. Where material safety data sheets are destroyed, a record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used shall be retained for at least thirty years; and

3. Section 3204(c)(5)(D) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty years.

4. Biological monitoring results designated as exposure records by specific occupational safety and health regulations shall be preserved and maintained as required by the specific regulation.

(C) Analyses Using Exposure or Medical Records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

(2) Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that chest X-ray films shall be preserved in their original state.

(e) Access to Records.

(1) General.

(A) Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made. Before the time for providing access has expired, an employer after notice to the employee or designated representative may, by notification to be followed in writing, request an extension of time from the Chief, Division of Occupational Safety and Health, which shall be granted upon a finding of good cause by the Chief.

(B) The employer may require of the requester only such information as should be readily known to the requester and which may be necessary to locate or identify the records being requested (e.g., dates and locations where the employee worked during the time period in question).

(C) Whenever an employee or designated representative requests a copy of a record, the employer shall assure that either:

1. A copy of the record is provided without cost to the employee or designated representative;
2. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or designated representative for copying the record; or
3. The record is loaned to the employee or designated representative for a reasonable time to enable a copy to be made.

(D) In the case of an original X-ray, the employer may restrict access to on-site examination or make other suitable arrangements for the temporary loan of the X-ray.

(E) Whenever a record has been provided previously without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for additional copies of the record.

EXCEPTIONS: 1. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided.

2. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

(F) Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.

(G) Whenever an employee requests access to a specific written consent submitted to the employer, the employer shall comply pursuant to the provisions for affording employee access to records stipulated by sections 3204(e)(1)(A)-(C).

(2) Employee and Designated Representative Access.

(A) Employee Exposure Records.

1. Except as limited by section 3204(f), each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, exposure records relevant to the employee consist of:

a. A record containing measurements or monitoring results of the amount of a toxic substance or harmful physical agent to which the employee is or has been exposed;

b. In the absence of such directly relevant records, such records of other employees with past or present job duties or working conditions related to or similar to those of the employee to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents to which the employee is or has been subjected; and

c. Exposure records to the extent necessary to reasonably indicate the amount and nature of the toxic substance or harmful physical agent at workplaces or working conditions to which the employee is being assigned or transferred.

2. Requests by designated representatives for unconsented access to employee exposure records shall be in writing and shall specify with reasonable particularity:

a. The records requested to be disclosed; and

b. The occupational health need for gaining access to these records.

(B) Employee Medical Records.

1. Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in section 3204(e)(2)(B)4.

2. Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. Appendix A to this section contains a sample form which may be used to establish specific written consent for access to employee medical records.

3. Whenever access to employee medical records is requested in accordance with section 3204(e)(2)(B)1 or 2, a physician representing the employer may recommend that the employee or designated representative: consult with the physician for the purposes of reviewing and discussing the records requested; accept a summary of material facts and opinions in lieu of the records requested; or accept release of the requested records only to a physician or other designated representative.

4. Whenever an employee requests access to his or her employee medical records and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may deny the employee's request for direct access to this information only, and the employer shall inform the employee that access will only be provided to a designated representative of the employee having specific written consent.

5. Where a designated representative with specific written consent requests access to information withheld in accordance with section 3204(e)(2)(B)4, the employer shall assure the access of the designated representative to this information even when it is known that the designated representative will give the information to the employee. Nothing in this section precludes a physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

NOTE: Nothing in this section precludes a physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

(C) Analyses Using Exposure or Medical Records.

1. Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

2. Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.

(3) Division of Occupational Safety and Health Access.

(A) Each employer shall, upon request, and without derogation of any rights under the Constitution of the United States, the Constitution of the State of California or the California Occupational Safety and Health Act of

1973, Labor Code sections 6300 et seq., that the employer chooses to exercise, assure the prompt access of representatives of the Chief of the Division of Occupational Safety and Health (DOSH) to employee exposure and medical records and to analyses using exposure or medical records.

(B) Whenever DOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

(f) Trade Secrets.

(1) Except as provided in section 3204(f)(2), nothing in this section precludes an employer from deleting from records requested by a health professional, an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the health professional, employee or designated representative is notified that such information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the requesting party to identify where and when exposure occurred.

(2) The employer may withhold the specific chemical identity, including the chemical name and other specific identification of a toxic substance from a disclosable record provided that:

(A) Evidence is included to support the claim that the information withheld is a trade secret;

(B) All other available information on the properties and effects of the toxic substance is disclosed;

(C) The employer informs the requesting party that the specific chemical identity is being withheld as a trade secret; and

(D) The specific chemical identity is made available to health professionals, employees and designated representatives in accordance with the specific applicable provisions of this subsection, section 3204(f).

(3) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic substance is necessary for emergency or first-aid treatment, the employer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of section 3204(f)(4) and (f)(5), as soon as circumstances permit.

(4) In non-emergency situations, an employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under section 3204(f)(2), to a health professional, employee, or designated representative if:

(A) The request is in writing;

(B) The request describes with reasonable detail one or more of the following occupational health needs for the information:

1. To assess the hazards of the chemicals to which employees will be exposed;
2. To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;
3. To conduct pre-assignment or periodic medical surveillance of exposed employees;
4. To provide medical treatment to exposed employees;
5. To select or assess appropriate personal protective equipment for exposed employees;
6. To design or assess engineering controls or other protective measures for exposed employees; and
7. To conduct studies to determine the health effects of exposure.

(C) The request explains in detail why the disclosure of the specific chemical identity is essential and that in lieu thereof, the disclosure of the following information would not enable the health professional, employee or designated representative to provide the occupational health services described in section 3204(f)(4)(B):

1. The properties and effects of the chemical;
2. Measures for controlling worker's exposure to the chemical;
3. Methods of monitoring and analyzing worker's exposure to the chemical; and
4. Methods of diagnosing and treating harmful exposures to the chemical.

(D) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(E) The health professional, employee or designated representative and the employer or contractor of the services of the health professional or designated representative agree in a written confidentiality agreement that the health professional, employee or designated representative will not use the trade secret information for any purpose other than the health needs(s) asserted and agree not to release the information under any circumstances other than to DOSH, as provided in section 3204(f)(9), except as authorized by the terms of the agreement or by the employer.

- (5) The confidentiality agreement authorized by section 3204(f)(4)(D):
- (A) May restrict the use of the information to the health purposes indicated in the written statement of need;
  - (B) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and
  - (C) May not include requirements for the posting of a penalty bond.
- (6) Nothing in this section is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.
- (7) If the health professional, employee or designated representative receiving the trade secret information decides that there is a need to disclose it to DOSH, the employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.
- (8) If the employer denies a written request for disclosure of a specific chemical identity, the denial must:
- (A) Be provided to the health professional, employee or designated representative within thirty days of the request;
  - (B) Be in writing;
  - (C) Include evidence to support the claim that the specific chemical identity is a trade secret;
  - (D) State the specific reasons why the request is being denied; and
  - (E) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.
- (9) The health professional, employee or designated representative whose request for information is denied under section 3204(f)(4) may refer the request and the written denial of the request to DOSH for consideration.
- (10) When a health professional, employee or designated representative refers a denial to DOSH under section 3204(f)(9), DOSH shall consider the evidence to determine if:
- (A) The employer has supported the claim that the specific chemical identity is a trade secret;
  - (B) The health professional, employee or designated representative has supported the claim that there is a medical or occupational health need for the information; and
  - (C) The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.
- (11)(A) If DOSH determines that the specific chemical identity requested under section 3204(f)(4) is not a bona fide trade secret, or that it is a trade secret but the requesting health professional, employee or designated representative has a legitimate medical or occupational health need for the information and has executed a written confidentiality agreement with adequate means for complying with the terms of such agreement, the employer will be subject to citation by DOSH.
- (B) If an employer demonstrates to DOSH that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a specific chemical identity trade secret, the Chief of DOSH may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health needs are met without an undue risk of harm to the employer.
- (12) Notwithstanding the existence of a trade secret claim, and employer shall, upon request, disclose to the Chief of DOSH any information which this section requires the employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Chief of DOSH so that dutiable determinations of trade secret status can be made and the necessary protection can be implemented.
- (13) Nothing in this section shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.
- (g) Employee Information.
- (1) Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform current employees covered by this section of the following:
- (A) The existence, location, and availability of any records covered by this section;
  - (B) The person responsible for maintaining and providing access to records; and
  - (C) Each employee's rights of access to these records.
- (2) Each employer shall keep a copy of this section and its appendices and make copies readily available, upon request, to employees. The employer shall also distribute to current employees any informational materials concerning this section which are made available to the employer by the Chief of DOSH.
- (h) Transfer of Records.
- (1) Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

(2) Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

(3) Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

(A) Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

(B) Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

(4) Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least three (3) month's notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

(i) Appendices. (omitted)

**3317. Illumination.** (a) Working areas, stairways, aisles, passageways, work benches and machines shall be provided with either natural or artificial illumination which is adequate and suitable to provide a reasonably safe place of employment. Minimum illumination levels for safety alone are listed for various typical areas in Table IL-1. (Title 24, Part 2, Section 2-1755.).

(b) When adequate natural illumination or permanent artificial illumination cannot be made available to secure the safety of employees, suitable portable lights shall be provided.

(c) Skylights, side windows, lamps, and other light accessories which provide necessary illumination shall be kept sufficiently clean, adjusted, and repaired so as not to impair the illumination required for the safety of employees.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code; Section 18943(c), Health and Safety Code.

**3363. Water Supply.** (a) Potable water in adequate supply shall be provided in all places of employment for drinking and washing and, where required by the employer of these orders, for bathing, cooking, washing of food, washing of cooking and eating utensils, washing of food preparation or processing premises, and personal service rooms. (Title 24, Part 5, Section 5-1001; Exception No. 2: (b))

(b) All sources of drinking water shall be maintained in a clean and sanitary condition. Drinking fountains and portable drinking water dispensers shall not be located in toilet rooms. (Title 24, Part 5, Section 5-1001; Exception No. 2: (c))

(c) Portable drinking water dispensers shall be equipped with a faucet or drinking fountain, shall be capable of being tightly closed and shall be otherwise designed, constructed and serviced so that sanitary conditions are maintained. Such dispensers shall be clearly marked as to their contents.

(d) The dipping or pouring of drinking water from containers, such as from barrels, pails or tanks, is prohibited regardless of whether or not the containers are fitted with covers.

(e) The common use of a cup, glass or other vessel for drinking purposes is prohibited.

(f) Nonpotable water shall not be used for drinking, washing, or bathing, washing of clothing, cooking, washing of food, washing of cooking or eating utensils, washing of food preparation or processing premises or other personal service rooms. (Title 24, Part 5, Section 5-1012 (a))

(g) Outlets for nonpotable water, such as water for industrial or fire-fighting purposes, shall be posted in a manner understandable to all employees to indicate that the water is unsafe and shall not be used for drinking, washing, cooking or other personal service purposes. (Title 24, Part 5, Section 5-1012 (c))

(h) Nonpotable water systems or systems carrying any other nonpotable substance shall be installed so as to prevent backflow or back-siphonage into a potable water system. (Title 24, Part 5, Section 5-1012 (b))

NOTE: Authority and reference cited: Section 142.3, Labor Code.

**3366. Washing Facilities.** (a) Washing facilities for maintaining personal cleanliness shall be provided in every place of employment. These facilities shall be reasonably accessible to all

employees. (Title 24, Part 5, Section 5-910(a)2(A))

(b) Washing facilities shall be maintained in good working order and in a sanitary condition. (Title 24, Part 5, Section 5-910(a)2(B))

(c) Lavatories, including those associated with toilet rooms shall be made available according to the following table

Type of Employment	Number of Employees	Minimum Number of Lavatories
Nonindustrial - office buildings, public buildings, and similar establishments	1 to 15 16 to 35 36 to 60 61 to 90 91 to 125 over 125	1 2 3 4 5 1 additional for each additional 45 employees or fraction thereof.
Industrial - factories warehouses, loft buildings, and similar establishments	1 to 100 over 100	1 for each 10 employees. 1 additional for each additional 15 employees or fraction thereof.

In a multiple-use lavatory, 24 lineal inches of sink or 18 inches of circular basin, when provided with individual faucet, shall be considered equivalent to one lavatory.

EXCEPTION: (1) Employees engaged in hand-labor operations at agricultural establishments are subject to the sanitation provisions of Section 3457.

(d) Each lavatory shall be provided with running water and suitable cleansing agents. The water shall be available at temperatures of at least 85 °F in those instances where:

- (1) Substances regulated as carcinogens in these orders are used; or
- (2) Skin contact may occur with substances designated skin (S) in section 5155.

NOTE: This section does not prevent local health departments from enforcing more stringent standards contained in the Health and Safety Code for food handlers.

(e) Clean individual hand towels, or sections thereof, of cloth or paper or warm-air blowers convenient to the lavatories shall be provided. (Title 24, part 5, section 5-910(a)2(E))

(f) Where showering is required by the employer or these orders:

- (1) Separate shower rooms shall be provided for each sex. One shower facility with hot and cold water feeding a common discharge line shall be provided for each ten employees, or numerical fraction thereof, who are required to shower during the same shift. When there are less than five employees, the same shower room may be used by both sexes provided the shower room can be locked from the inside. (Title 24, part 5, section 5-910(a)2(F))
- (2) Body soap or other appropriate cleansing agents convenient to the shower shall be provided.
- (3) Employees who use showers shall be provided with individual clean towels.

NOTE: Authority and reference cited: Section 142.3, Labor Code.

**3367. Change Rooms.** (a) Whenever employees are required to change from street clothes into protective clothing, change rooms equipped with storage facilities for street clothes and separate storage facilities for the protective clothing shall be provided.

(b) Where working clothes are provided by the employer and become wet or are washed between shifts, provision shall be made to ensure that such clothing is dry before reuse.

NOTE: Authority and reference cited: Section 142.3, Labor Code.

**3380. Personal Protective Devices.** (a) Protection where modified by the words head, eye, body, hand, and foot, as required by the orders in this article means the safeguarding obtained by means of safety devices and safeguards of the proper type for the exposure and of such design, strength and quality as to eliminate, preclude or mitigate the hazard.

NOTE: In order that safety devices or safeguards, which may include personal protective equipment, be acceptable as to proper type, design, strength and quality they shall be at least equivalent to those complying with the standards approved by The American National Standards Institute, Bureau of Standards, or other recognized authorities, except that where no authoritative standard exists for a safety device or safeguard, the use of such safeguard or safety device shall be subject to inspection and acceptance or rejection by the Division.

(b) Protective equipment shall be distinctly marked so as to facilitate identification of the manufacturer.

EXCEPTION: Employer manufactured shields, barriers, etc.

(c) The employer shall assure that the employee is instructed and uses protective equipment in accordance with the manufacturer's instructions.

(d) The employer shall assure that employee-owned personal protective equipment complies with standards and regulations prescribed by the Division of Industrial Safety. The employer shall assure this equipment is maintained in a safe, sanitary condition.

(e) Protectors shall be of such design, fit and durability as to provide adequate protection against the hazards for which they are designed. They shall be reasonably comfortable and shall not unduly encumber the employee's movements necessary to perform his work.

NOTE: Authority and reference cited: Section 142.3, Labor Code.

**3381. Head Protection.**

(a) Employees exposed to flying or falling objects and/or electric shock and burns shall be safeguarded by means of approved head protection in accordance with

(b)(1), (2) and (c).

(b)(1) For exposure to flying or falling objects, or electric shock/burns (600 volts or less) helmets purchased after January 12, 1995 shall comply with ANSI Z89.1-1986, Class A or Class B, Protective headwear for Industrial Workers-Requirements, which is hereby incorporated by reference.

(2) Helmets purchased on or before January 12, 1995 shall comply with ANSI Z89.1-1969, Class A or Class D, Safety Requirements for Industrial Head Protection, which is hereby incorporated by reference.

(c) For exposure to high voltage electric shock (above 600 volts) and burns, helmets shall comply with ANSI Z89.2-1971, Safety Requirements for Industrial Protective Helmets for Electrical Workers, Class B.

(d) Where there is a risk of injury from hair entanglements in moving parts of machinery, combustibles or toxic contaminants, employees shall confine their hair to eliminate the hazard.

NOTE: Authority and reference cited: Section 142.3.

**3382. Eye and Face Protection.**

(a) Employees working in locations where there is a risk of receiving eye injuries such as punctures, abrasions, contusions, or burns as a result of contact with flying particles, hazardous substances, projections or injurious light rays which are inherent in the work or environment, shall be safeguarded by means of face or eye protection. Suitable screens or shields isolating the hazardous exposure may be considered adequate safeguarding for nearby employees.

The employer shall provide and ensure that employees use protection suitable for the exposure.

(b) Where exposed to injurious light rays, the shade of lens to use in any instance shall be selected in accordance with the following table.

Protection against radiant energy-Selection of shade numbers for welding filter. Table EP-1 shall be used as a guide for the selection of the proper shade numbers of filter lenses or plates used in welding. Shade more dense than those listed may be used to suit the individual's needs.

TABLE EP-1

**FILTER LENS SHADE NUMBERS FOR PROTECTION AGAINST RADIANT ENERGY**

<u>Welding operation</u>	<u>Shade number</u>
Shielded metal-arc welding 1/16-, 3/32-, 1/8-, 5/32-inch diameter electrodes	10
Gas-shielded arc welding (nonferrous) 1/16-, 3/32-, 1/8-, 5/32-inch diameter electrodes	11
Gas-shielded arc welding (ferrous) 1/16-, 3/32-, 1/8-, 5/32-inch diameter electrodes	12
Shielded metal-arc welding 3/16-, 7/32-, 1/4-inch diameter electrodes	12
5/16-, 3/8-inch diameter electrodes	14
Atomic hydrogen welding	10-14
Carbon-arc welding	14

Soldering	2
Torch brazing	3 or 4
Light cutting, up to 1 inch	3 or 4
Medium cutting, 1 inch to 6 inches	4 or 5
Heavy cutting, over 6 inches	5 or 6
Gas welding (light), up to 1/8-inch	4 or 5
Gas welding (medium), 1/8-inch to 1/2-inch	5 or 6
Gas welding (heavy), over 1/2-inch	6 or 8

(c) Where eye protection is required and the employee requires vision correction, such eye protection shall be provided as follows:

- (1) Safety spectacles with suitable corrected lenses, or
- (2) Safety goggles designed to fit over spectacles, or
- (3) Protective goggles with corrective lenses mounted behind the protective lenses.

NOTE: The wearing of contact lens is prohibited in working environments having harmful exposure to materials or light flashes, except when special precautionary procedures, which are medically approved, have been established for the protection of the exposed employee.

(d)(1) Design, construction, testing and use of devices for eye and face protection purchased after January 12, 1995 shall be in accordance with American National Standard, Practice for Occupational and Educational Eye and Face Protection, Z87.1-1989, which is hereby incorporated by reference, except that integral lens and frame design will be allowed if the lens frame combination provides unit strength, as well as impact, penetration, heat and flammability resistance, optical qualities and eye zone coverage equal to or greater than is required by ANSI Z87.1-1989.

(2) Eye and face protection purchased on or before January 12, 1995 shall be designed, constructed, and used in accordance with American National Standard (ANSI) Z87.1-1968, which is hereby incorporated by reference.

(e) Laser Protection. Employees whose occupation or assignment requires exposure to laser beams shall be furnished suitable laser safety goggles which will protect for the specific wavelength of the laser and be of optical density (O.D.) adequate for the energy involved. Table EP-2 lists the maximum power or energy density for which adequate protection is afforded by glasses of optical densities from 5 through 8.

TABLE EP-2  
SELECTING LASER SAFETY GLASS

<u>CW maximum power density (watts/cm<sup>2</sup>)</u>	<u>Optical density (O.D.)</u>	<u>Attenuation factor</u>
10 <sup>-2</sup>	5	10 <sup>5</sup>
10 <sup>-1</sup>	6	10 <sup>6</sup>
1.0	7	10 <sup>7</sup>
10.0	8	10 <sup>8</sup>

Output levels falling between lines in this table shall require the higher optical density.

- (1) All protective goggles shall bear a label identifying the following data:
  - (A) The laser wavelengths for which use is intended;
  - (B) The optical density of those wavelengths;
  - (C) The visible light transmission.

NOTE: Authority and reference cited: Section 142.3, Labor Code.

**3383. Body Protection.** (a) Body protection may be required for employees whose work exposes parts of their body, not otherwise protected as required by other orders in this article, to hazardous or flying substances or objects.

(b) Clothing appropriate for the work being done shall be worn. Loose sleeves, tails, ties, lapels, cuffs, or other loose clothing which can be entangled in moving machinery shall not be worn.

(c) Clothing saturated or impregnated with flammable liquids, corrosive substances, irritants or oxidizing agents shall be removed and shall not be worn until properly cleaned.

**3384. Hand Protection.** (a) Hand protection shall be required for employees whose work involves unusual and excessive exposure of hands to cuts, burns, harmful physical or chemical agents or radioactive materials which are encountered and capable of causing injury or impairments.

(b) Hand protection, such as gloves, shall not be worn where there is a danger of the hand protection becoming entangled in moving machinery or materials.

EXCEPTION: Machinery or equipment provided with a momentary contact device as defined in Section 3941.

1. As used in subsection (b) the term entangled refers to hand protection (gloves) being caught and pulled into the danger zone of machinery/equipment. Use of hand protection around smooth surfaced rotating equipment does not constitute an entanglement hazard if it is unlikely that the hand protection will be drawn into the danger zone.

2. Wrist watches, rings, or other jewelry should not be worn while working with or around machinery with moving parts in which such objects may be caught, or around electrically energized equipment.

NOTE: 1. As used in subsection (b) the term entangled refers to hand protection (gloves) being caught and pulled into the danger zone of machinery/equipment. Use of hand protection around smooth surfaced rotating equipment does not constitute an entanglement hazard if it is unlikely that the hand protection will be drawn into the danger zone.

NOTE: 2. Wrist watches, rings, or other jewelry should not be worn while working with or around machinery with moving parts in which such objects may be caught, or around electrically energized equipment.

**3385. Foot Protection.** (a) Appropriate foot protection shall be required for employees who are exposed to foot injuries from hot, corrosive, poisonous substances, falling objects, crushing or penetrating actions, which may cause injuries or who are required to work in abnormally wet locations.

(b) Footwear which is defective or inappropriate to the extent that its ordinary use creates the possibility of foot injuries shall not be worn.

(c)(1) Protective footwear for employees purchased after January 12, 1995 shall meet the requirements and specifications in American National Standard for Personal Protection-Protective Footwear, Z41 1991, which is hereby incorporated by reference.

(2) Safety-toe footwear purchased on or before January 12, 1995 shall meet the requirements of American National Standard for Men's Safety-Toe Footwear, Z41.1-1967, which is hereby incorporated by reference.

NOTE: Authority and reference cited: Section 142.3, Labor Code.

**3400. Medical Services and First Aid.** (a) Employer shall ensure the ready availability of medical personnel for advice and consultation on matters of industrial health or injury.

(b) In the absence of an infirmary, clinic, or hospital, in near proximity to the workplace, which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Training shall be equal to that of the American Red Cross or the Mining Enforcement and Safety Administration.

(c) There shall be adequate first-aid materials, approved by the consulting physician, readily available for workmen on every job. Such materials shall be kept in a sanitary and usable condition. A frequent inspection shall be made of all first-aid materials, which shall be replenished as necessary.

(d) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

(e) Stretchers and blankets, or other adequate warm-covering, may be required by the Division, unless ambulance service is available within 30 minutes under normal conditions.

(f) At isolated locations, provisions must be made in advance for prompt medical attention in case of serious injuries. This may be accomplished by on-the-site facilities or proper equipment for prompt transportation of the injured person to a physician or a telephone communication system for contacting a doctor or combinations of these that will avoid unnecessary delay in treatment.

**5141. Control of Harmful Exposure to Employees.** (a) Engineering Controls. Harmful exposures shall be prevented by engineering controls whenever

feasible.

(b) Administrative Controls. Whenever engineering controls are not feasible or do not achieve full compliance, administrative controls shall be implemented if practicable.

(c) Control by Respiratory Protective Equipment. Respiratory protective equipment, in accordance with Section 5144, shall be used to prevent harmful exposures as follows:

- (1) During the time period necessary to install or implement feasible engineering controls;
- (2) Where feasible engineering controls and administrative controls fail to achieve full compliance; and
- (3) In emergencies.

NOTE: Authority and reference cited: Section 142.3, Labor Code.

#### **5144. Respiratory Protective Equipment.**

(a) When and Where to Be Worn. When it is clearly impracticable to remove harmful dusts, fumes, mists, vapors, or gases at their source, as required in Sections 5141 and 5143 or where emergency protection against occasional and/or relatively brief exposure is needed, the employer shall provide, and the employee exposed to such hazard shall use, approved respiratory equipment.

(b) Approved Equipment. Whenever respirators are required to be used to control harmful exposures, only respiratory equipment approved for that purpose shall be used and such equipment shall be approved by the Mining Enforcement and Safety Administration or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare. Only parts approved for the specific respirator system shall be used for replacement. Approval of equipment for which the above agencies have not established standards shall be contingent upon proof of its merits satisfactory to the Division. (See Section 3206).

(c) Education and Training. Employees shall be instructed and trained in the need, use, sanitary care, and limitations of such respiratory equipment as any employee may have the occasion to use. Respirators shall be inspected before each use and shall not be worn when conditions prevent a good gas-tight face seal. Every respirator wearer shall be instructed in how to properly fit and test respiratory equipment and how to check the facepiece fit and shall be provided the opportunity to wear respiratory equipment in normal air for an adequate familiarity period, and to wear it in a test atmosphere (such as generated by smoke tubes or isoamyl acetate).

(d) Maintenance and Sanitation.

(1) The employer shall provide, repair, or replace respiratory protective equipment as may be required due to wear and deterioration.

(2) Respirators maintained for emergency use shall be inspected and sanitized after each use and inspected at least monthly. A record of the most recent inspection shall be maintained on the respirator or its storage container, and shall include the inspector's identification, the date and a respirator identification number.

(3) The employer shall provide means for cleaning all respiratory protective equipment. Routinely used respiratory equipment shall be regularly cleaned, inspected, and sanitized by a qualified individual. Respiratory equipment shall not be passed on from one person to another until it has been cleaned and sanitized.

(4) When not in use, respirators shall be stored to protect against dust, sunlight, extreme temperatures, excessive moisture, or damaging chemicals.

(5) Cylinders shall be tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR Part 178).

(e) Air Quality.

(1) Compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration shall be of high purity. Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 (ANSI Z86.1-1973).

(2) Breathing gas containers shall be legibly identified with the word AIR or OXYGEN as appropriate in letters at least 1/25 the diameter of the cylinder but in no case less than 1/8 " , by means of stenciling, stamping or labeling as near the valve end as practical. Marking in accordance with Federal Specification BB-A-1034a, June 21, 1968, Air, Compressed for Breathing Purposes; or Interim Federal Specification GG-B-0067b, April 27, 1965, Breathing Apparatus, Self-Contained may also be used.

(3) The compressor for supplying air shall be equipped with necessary safety and standby devices. Compressors shall be constructed and situated so as to avoid entry of contaminated air into the system and suitable in-line air purifying sorbent beds and filters installed to further assure breathing air quality. Alarms to indicate compressor failure shall be installed in the system. A receiver of sufficient capacity to enable the respirator wearer to exit from a contaminated atmosphere shall be provided. If an oil-lubricated compressor is used, it shall be

equipped with a continuous reading carbon monoxide monitoring system set to alarm should the carbon monoxide concentration exceed 20 ppm or a high temperature alarm which will activate when the discharge air temperature exceeds 110% of the normal operating temperature in degrees Fahrenheit, or both. If only the high temperature alarm is used, the air from the compressor (while operating at normal temperature) shall be tested for carbon monoxide weekly or for each use whichever is less frequent. Records of the results of such tests shall be maintained for the previous 6 months. Alarm systems required in this section shall be tested at least monthly.

EXCEPTION: The requirement for compressor failure alarms and a receiver do not apply to compressors which are used to supply breathing air to supplied air respirators used in atmospheres not immediately dangerous to life or health.

(4) Air-line couplings shall be incompatible with outlets for other gas systems to prevent inadvertent servicing of air-line respirators with nonrespirable gases or oxygen.

(5) The air pressure at the hose connection to positive-pressure respiratory equipment shall be within the range specified in the approval of the equipment.

(f) Respiratory Protection Program.

(1) Written operating procedures governing the selection and use of respirators shall be established and shall include procedures for selection, instruction and training, cleaning and sanitizing, inspection and maintenance.

(2) Selection and Issuance of Respirators. Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection: Z88.2-1969. The correct respirator shall be specified for each job. The individual issuing them shall be adequately instructed to insure that the correct respirator is used.

(3) Program Surveillance and Evaluation. Appropriate surveillance of environmental conditions in the work area, such as increases in exposure concentration or the introduction of other toxic substances, or other conditions which increase the degree of employee exposure or stress shall be maintained. The program effectiveness shall be evaluated by regular inspections.

(g) Atmospheres Immediately Hazardous to Life or Health. In atmospheres immediately hazardous to life or health, at least two persons equipped with approved respiratory equipment shall be on the job. Communications shall be maintained between both or all individuals present. Standby persons, at least one of which shall be in a location which will not be affected by any likely incidents, shall be present with suitable rescue equipment including self-contained breathing apparatus.

(h) Medical Limitations. Persons should not be assigned to tasks requiring use of respirators unless it has been determined that they are physically able to perform the work while using the required respiratory equipment. A licensed physician shall determine what health and physical conditions are pertinent. The medical status of persons assigned use of respiratory equipment should be reviewed at least annually. Wearing of contact lenses shall not be permitted in an atmosphere where a respirator is required.

(i) Labeling Gas Mask Canisters. Gas mask canisters shall be labeled and color coded as indicated in Table 1 before they are placed in service. The canister label shall include the following information:

In bold letters

(1) "Canister for \_\_\_\_\_"  
(Name for Atmospheric Contaminant)

or

"Type N Gas Mask Canister"

(2) "For Respiratory Protection in Atmospheres Containing Not More Than \_\_\_\_\_ Percent by Volume of \_\_\_\_\_"  
(Name of Contaminant)

Each canister shall have a label warning that gas masks should be used only in atmospheres containing sufficient oxygen to support life. Canisters having a special high-efficiency filter for protection against radionuclides and other highly toxic particulates shall be labeled with a statement of the type and degree of protection afforded by the filter.

TABLE 1

Atmospheric Contaminants to be Protected Against

Colors Assigned\*

Acid gases

White

Hydrocyanic acid gas

White with 1/2-inch green Hydrostripe completely around the canister near the bottom

Chlorine gas

White with 1/2-inch yellow stripe completely around the

	canister near the bottom
Organic vapor	Black
Ammonia gas	Green
Acid gases and ammonia gas	Green with 1/2-inch white Acid stripe completely around the canister near the bottom
Carbon monoxide	Blue
Acid gases and organic vapors	Yellow
Hydrocyanic acid gas and chloropicrin vapor	Yellow with 1/2-inch blue stripe completely around the canister near the bottom
Acid gases, organic vapors, and ammonia gases	Brown
Radioactive materials, excepting tritium and noble gases	Purple (Magenta)
Particulates (dusts, fumes, mists, fogs or smokes) in combination with any of the above gases or vapors	Canister color for contaminant, as designated above, with 1/2-inch gray stripe
<u>Atmospheric Contaminants to be Protected Against</u>	<u>Colors Assigned *</u>
All of the above atmospheric contaminants	completely around the canister near the top Red with 1/2-inch gray stripe completely around the canister near the top

\* Gray shall not be assigned as the main color for a canister designed to remove acids or vapors.

NOTE: Orange shall be used as a complete body, or stripe color to represent gases not included in this table. The user will need to refer to the canister label to determine the degree of protection the canister will afford.

NOTE: Authority and reference cited: Section 142.3, Labor Code.

#### 5194. Hazard Communication.

(a) (Reserved)

(b) Scope and Application.

(1) This section requires manufacturers or importers to assess the hazards of substances which they produce or import, and all employers to provide information to their employees about the hazardous substances to which they may be exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers.

(2) This section applies to any hazardous substance which is known to be present in the work place in such a manner that employees may be exposed under normal conditions of use or in a reasonably foreseeable emergency resulting from work place operations.

(3) This section applies to laboratories that primarily provide quality control analyses for manufacturing processes or that produce hazardous substances for commercial purposes, and to all other laboratories except those under the direct supervision and regular observation of an individual who has knowledge of the physical hazards, health hazards, and emergency procedures associated with the use of the particular hazardous substances involved, and who conveys this knowledge to employees in terms of safe work practices. Such excepted laboratories must also ensure that labels of incoming containers of hazardous substances are not removed or defaced pursuant to section 5194(f)(4), and must maintain any material safety data sheets that are received with incoming shipments of hazardous substances and ensure that they are readily available to laboratory employees pursuant to section 5194(g).

(4) This section does not require labeling of the following substances:

(A) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(B) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products (e.g., flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Food and Drug Administration;

(C) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms; and;

(D) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission.

(5) This section does not apply to:

(A) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(B) Tobacco or tobacco products;

(C) Wood or wood products (non-excluded hazardous substances which are used in conjunction with wood or wood products, or are known to be present as impurities in those materials, are covered by this section);

(D) Articles (hazardous substances used in the manufacture or use of an article are covered by this section unless otherwise excluded);

(E) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

(F) Retail food sale establishments and all other retail trade establishments, exclusive of processing and repair work areas;

(G) Consumer products packaged for distribution to, and use by, the general public, provided that employee exposure to the product is not significantly greater than the consumer exposure occurring during the principal consumer use of the product;

(H) The use of a substance in compliance with regulations of the Director of the Department of Pesticide Regulation issued pursuant to section 12981 of the Food and Agricultural Code.

(I) Work operations where employees only handle substances in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or transportation); however, this section does apply to these operations as follows:

1. Employers shall ensure that labels on incoming containers of hazardous substances are not removed or defaced;

2. Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous substances, shall obtain a material safety data sheet for sealed containers of hazardous substances received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and,

3. Employers shall ensure that employees are provided with information and training in accordance with subsection (h) except for the location and availability of the written hazard communication program under subsection (h)(2)(C), to the extent necessary to protect them in the event of a spill or leak of a hazardous substance from a sealed container.

(6) Proposition 65 Warnings.

(A) Notwithstanding any other provision of law including the preceding subsections, an employer which is a person in the course of doing business within the meaning of Health and Safety Code Section 25249.11(a) and (b), is subject to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the "Act") (Health and Safety Code 25249.5 et seq.), and shall comply with the Act in the manner set forth in subsections (B) and (C) below. The following employers are not subject to the Act:

1. an employer employing fewer than ten employees;

2. any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof;

3. any entity in its operation of a public water system as defined in Health and Safety Code Section 4010.1.

(B) Exposures Subject to Proposition 65 and Hazard Communication. Before exposing any employee to any hazardous substance that otherwise falls within the scope of this section and which requires a warning under this Act (see 22 CCR Section 12000, Chemicals Known to the State to Cause Cancer or Reproductive Toxicity) except as provided in subsection (D) below, any employer subject to the Act shall comply with the requirements set forth in subsections (d) through (k). Such compliance shall be deemed compliance with the Act.

(C) Exposures Subject to Proposition 65 Only. Before knowingly and intentionally exposing any employee to any hazardous substance that does not otherwise fall within the scope of the section, but which requires a warning under the Act (see 22 CCR Section 12000, Chemicals Known to the State to Cause Cancer or Reproductive Toxicity) except as provided in subsection (D) below, any employer subject to the Act shall either provide a warning

to employees in compliance with California Code of Regulations Title 22 (22 CCR) Section 12601(c) in effect on May 9, 1991 or shall comply with the requirements set forth in subsections (d) through (k).

(D) Exposures Not Subject to Proposition 65. A warning required by subsection (B) and (C) above shall not apply to any of the following:

1. An exposure for which federal law governs warning in a manner that preempts state authority.
2. An exposure that takes place less than twelve months subsequent to the listing of the chemical in 22 CCR Section 12000.
3. An exposure for which the employer responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for the chemicals known to the State to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1,000) times the level in question for chemicals known to the State to cause reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical in 22 CCR Section 12000. In any enforcement action the burden of showing that an exposure meets the criteria of this subsection shall be on the employer. (c)

(E) Additional Enforcement of Proposition 65. In addition to any other applicable enforcement provision, violations or threatened violations of the Act may be enforced in the manner set forth in Health and Safety Code Section 25249.7 for violations and threatened violations of Health and Safety Code Section 25249.6. Compliance with 22 CCR Section 12601(c) in effect on May 9, 1991 shall be deemed a defense to an enforcement action under Health and Safety Code Section 25249.7.

(F) All terms and provisions of subsection (b)(6) shall have the same meaning as the following 22 CCR Sections in effect on May 9, 1991: 12201(a), 12201(b), 12201(c), 12201(d), 12201(f), 12201(k), 12502, 12601, 12701(a), 12701(b), 12701(d), 12703, 12705, 12707, 12709, 12711, 12721, 12801, 12803, 12805, 12821 and 12901. The above listed 22 CCR Sections in effect on May 9, 1991 are printed in Appendix E to this section. Additionally, all terms and provisions of subsection (b)(6) shall have the same meaning as in the Act and in 22 CCR Section 12000.

(c) Definitions.

**Article** means a manufactured item: (1) which is formed to a specific shape or design during manufacture; (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (3) which does not release, or otherwise result in exposure to, a hazardous substance under normal conditions of use or in a reasonably foreseeable emergency resulting from workplace operations.

**CAS number** means the unique identification number assigned by the Chemical Abstracts Service to specific chemical substances.

**Chemical name** means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the substance for the purpose of conducting a hazard evaluation.

**Chief** means the Chief of the Division of Occupational Safety and Health, P.O. Box 420603, San Francisco, CA 94142, or designee.

**Combustible liquid** means any liquid having a flashpoint at or above 100 °F (37.8 °C), but below 200 °F (93.3 °C), except any mixture having components with flashpoints of 200 °F (93.3 °C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

**Common name** means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a substance other than by its chemical name.

**Compressed gas** means (A) a gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 °F (21.1 °C); or (B) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130 °F (54.4 °C) regardless of the pressure at 70 °F (21.1 °C); or (C) A liquid having a vapor pressure exceeding 40 psi at 100 °F (37.8 °C) as determined by ASTM D-323-72.

**Container** means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, tank truck, or the like that contains a hazardous substance. For purposes of this section, pipes or piping systems are not considered to be containers.

**Department** means the Department of Industrial Relations, P.O. Box 420603, San Francisco, CA 94142, or designee.

**Designated representative** means any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

**Director** means the Director of Industrial Relations, P.O. Box 420603, San Francisco, CA 94142, or designee.

**Distributor** means a business, other than a manufacturer or importer, which supplies hazardous substances to other distributors or to employers.

**Division** means the Division of Occupational Safety and Health (Cal/OSHA), California Department of Industrial Relations, or designee.

**Emergency** means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which may or does result in a release of a hazardous substance into the workplace.

**Employee** means every person who is required or directed by any employer, to engage in any employment, or to go to work or be at any time in any place of employment.

**Employer** means

(A) the State and every State agency.

(B) Each county, city, district, and all public and quasi-public corporations and public agencies therein.

(C) Every person including any public service corporation, which has any natural person in service.

(D) The legal representative of any deceased employer.

**Explosive** means a substance that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

**Exposure or Exposed** means any situation arising from work operation where an employee may ingest, inhale, absorb through the skin or eyes, or otherwise come into contact with a hazardous substance.

**Flammable** means a substance that falls into one of the following categories:

(A) Aerosol, flammable. An aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(B) Gas, flammable: 1. A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent of volume or less; or 2. a gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;

(C) Liquid, flammable. Any liquid having a flashpoint below 100 °F (37.8 °C), except any mixture having components with flashpoints of 100 °F (37.8 °C) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

(D) Solid, flammable. A solid, other than a blasting agent or explosive as defined in section 5237(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

**Flashpoint** means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(A) Tagliabue Closed Tester (see American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100 °F (37.8 °C), that do not have a tendency to form a surface film under test; or

(B) Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100 °F (37.8 °C), or that have a tendency to form a surface film under test; or

(C) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78)). Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

**Hazard warning** means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the health hazards and physical hazards of the substance(s) in the container(s).

**Hazardous substance** means any substance which is a physical hazard or a health hazard or is included in the List of Hazardous Substances prepared by the Director pursuant to Labor Code section 6382.

**Health hazard** means a substance for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes substances which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A provides further definitions and explanations of the scope of health hazards covered by this section, and Appendix B describes the criteria to be used to determine whether or not a substance is to be considered hazardous for purposes of this standard.

**Identity** means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the substance. The identity used shall permit cross-references to be made among the required list of hazardous substances, the label and the MSDS.

**Immediate use** means the hazardous substance will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

**Importer** means the first business with employees within the Customs Territory of the United States which receives hazardous substances produced in other countries for the purpose of supplying them to distributors or purchasers within the United States.

**Label** means any written, printed, or graphic material displayed on or affixed to containers of hazardous substances.

**Manufacturer** means a person who produces, synthesizes, extracts, or otherwise makes a hazardous substance.

**Material safety data sheet (MSDS)** means written or printed material concerning a hazardous substance which is prepared in accordance with section 5194(g).

**Mixture** means any solution or intimate admixture of two or more substances, at least one of which is present as a hazardous substance, which do not react chemically with each other.

**NIOSH** means the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services.

**Organic peroxide** means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

**Oxidizer** means a substance other than a blasting agent or explosive as defined in section 5237(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

**Physical hazard** means a substance for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

**Produce** means to manufacture, process, formulate, repackage, or re-label.

**Pyrophoric** means a substance that will ignite spontaneously in air at a temperature of 130 °F (54.4 °C) or below.

**Responsible party** means someone who can provide additional information on the hazardous substance and appropriate emergency procedures, if necessary.

**Specific chemical identity** means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

**Substance** means any element, chemical compound or mixture of elements and/or compounds.

**Trade secret** means any confidential formula, pattern, process, device, information, or compilation of information which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. A trade secret shall not include chemical identity information which is readily discoverable through qualitative analysis. Appendix D sets out the criteria to be used in evaluating trade secrets.

**Unstable (reactive)** means a substance which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

**Use** means to package, handle, react, or transfer.

**Water-reactive** means a substance that reacts with water to release a gas that is either flammable or presents a health hazard.

**Work area** means a room or defined space in a workplace where hazardous substances are produced or used, and where employees are present.

**Workplace** means any place, and the premises appurtenant thereto, where employment is carried on, except a place the health and safety jurisdiction over which is vested by law in, and actively exercised by, any state or federal agency other than the Division.

(d) Hazard Determination.

(1) Manufacturers and importers shall evaluate substances produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate substances unless they choose not to rely on the evaluation performed by the manufacturer or importer for the substance to satisfy this requirement.

(2) Manufacturers, importers, or employers evaluating substances shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section. Appendix A shall be consulted for the scope of health hazards covered, and Appendix B shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

(3) The manufacturer, importer, or employer evaluating substances shall treat any of the following sources as establishing that the substances listed in them are hazardous:

(A) The list of hazardous substances prepared by the Director pursuant to Labor Code section 6382 and as promulgated in title 8, California Code of Regulations, section 339. The concentrations and footnotes which are applicable to the list shall be understood to modify the same substance on all other source lists or hazard determinations set forth in sections 5194(d)(3)(B)-5194(d)(5)(D).

(B) 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA).

(C) 1991-1992 Threshold Limit Values for Chemical Substances in the Work Environment, American Conference of Governmental Industrial Hygienists (ACGIH):

The manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the substances in these source lists in accordance with the requirements of the standard.

(4) Manufacturers, importers, and employers evaluating substances shall treat any of the following sources as establishing that a substance is a carcinogen or potential carcinogen for hazard communication purposes:

(A) National Toxicology Program (NTP), Sixth Annual Report on Carcinogens, 1991.

(B) International Agency for Research on Cancer (IARC) Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man, Vols 1-53 and Supplements 1-8. World Health Organization.

(C) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

NOTE to (d)(4): The Registry of Toxic Effects of Chemical Substances published by the National Institute for Occupational Safety and Health indicates whether a substance has been found by NTP or IARC to be a potential carcinogen.

(5) The manufacturer, importer, or employer shall determine the hazards of mixtures of substances as follows:

(A) If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous;

(B) If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under section 5194(d)(4);

(C) If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and

(D) If the manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(6) Manufacturers, importers, or employers evaluating hazardous substances shall describe in writing the procedures they use to determine the hazards of the substance they evaluate. The written procedures are to be made available, upon request, to employees, their designated representatives, the Director, and NIOSH. The written description may be incorporated into the written hazard communication program required under section 5194(e).

(e) Written Hazard Communication Program.

(1) Employers shall develop, implement, and maintain at the workplace a written hazard communication program for their employees which at least describes how the criteria specified in sections 5194(f), (g), and (h) for

labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

(A) A list of the hazardous substances known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas);

(B) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with substances contained in unlabeled pipes in their work areas.

(2) In multi-employer workplaces, the written hazard communication program shall include the methods employers will use to inform any employers sharing the same work area of the hazardous substances to which their employees may be exposed while performing their work, and any suggestions for appropriate protective measures, including the following:

(A) The methods the employer will use to provide the other employer(s) with access to the material safety data sheet, or to make it available at a central location in the workplace, for each hazardous substance the other employer(s)' employees may be exposed to while working;

(B) The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and,

(C) The methods the employer will use to inform the other employer(s) of the labeling system used in the workplace.

(3) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Chief, and NIOSH, in accordance with the requirements of section 3204(e).

(f) Labels and Other Forms of Warning.

NOTE to (f): The requirements at sections 5225-5230 for labeling of all containers containing highly toxic, corrosive, flammable, oxidizing or pyrophoric substances apply to all employers, and apply regardless of any exception or allowance in section 5194(f).

(1) The manufacturer, importer, or distributor shall ensure that each container of hazardous substances leaving the workplace is labeled, tagged or marked with the following information:

(A) Identity of the hazardous substance(s);

(B) Appropriate hazard warnings; and

(C) Name and address of the manufacturer, importer, or other responsible party.

EXCEPTION to (f)(1): For solid metal (such as a steel beam or a metal casting) that is not exempted as an article due to its downstream use, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes. The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment. This exception to requiring labels on every container of hazardous substances is only for the solid metal itself and does not apply to hazardous substances used in conjunction with, or known to be present with, the metal and to which the employees handling the metal may be exposed (for example, cutting fluids or lubricants).

(2) Manufacturers, importers, or distributors shall ensure that each container of hazardous substances leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act (18 U.S.C. 1801 et seq.) and regulations issued under that Act by the Department of Transportation.

(3) If the hazardous substance is regulated by these orders in a substance-specific health standard, the manufacturer, importer, distributor, or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

(4) Except as provided in sections 5194(f)(5) and (f)(6) the employer shall ensure that each container of hazardous substances in the workplace is labeled, tagged, or marked with the following information:

(A) Identity of the hazardous substance(s) contained therein; and

(B) Appropriate hazard warnings.

(5) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by section 5194(f)(4) to be on a label. The written materials shall be readily accessible to the employees in their work area throughout

each work shift. In construction, the employer may use such written materials in lieu of affixing labels to individual containers as long as the alternative method identifies and accompanies the containers to which it is applicable and conveys the information required to be on a label.

(6) The employer is not required to label portable containers into which hazardous substances are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer. In construction, the employer is not required to label portable containers into, which hazardous substances are transferred from labeled containers, so long as either the labeled container stays on the jobsite or the employer has complied with section 5194(f)(5).

(7) The employer shall not remove or intentionally deface existing labels on incoming containers of hazardous substances, unless the container is immediately marked with the required information.

(8) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

(9) The manufacturer, importer, distributor, or employer need not affix new labels to comply with this section if existing labels already convey the required information.

(g) Material Safety Data Sheets.

(1) Manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous substance they produce or import. Employers shall have a material safety data sheet for each hazardous substance which they use.

NOTE to (g)(1): Employers should also refer to section 3204 concerning information to be retained after a particular substance is no longer in use.

(2) Each material safety data sheet shall be in English and shall contain at least the following information:

(A) The identity used on the label, and, except as provided for in section 5194(i) on trade secrets:

1. If the hazardous substance is a single substance, its chemical and common name(s) and CAS number(s);

2. If the hazardous substance is a mixture which has been tested as a whole to determine its hazards, the chemical, common name(s), and CAS number(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or,

3. If the hazardous substance is a mixture which has not been tested as a whole:

a. The chemical and common name(s), and CAS number(s) of all ingredients which have been determined to be health hazards, and which comprise 1% or greater of the composition, except that substances identified as carcinogens under subsection 5194(d)(4) shall be listed if the concentrations are 0.1% or greater;

b. The chemical and common name(s), and CAS number(s) of all ingredients which comprise less than 1% (0.1% for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees; and,

c. The chemical, common name(s), and CAS number(s) of all ingredients which have been determined to present a physical hazard when present in the mixture;

(B) Physical and chemical properties of the hazardous substance (such as vapor pressure, flash point);

(C) The physical hazards of the hazardous substance, including the potential for fire, explosion, and reactivity;

(D) The health hazards of the hazardous substance, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the substance;

(E) The potential route(s) of entry;

(F) The OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the manufacturer, importer, or employer preparing the material safety data sheet, where available.

(G) Whether the hazardous substance is listed in the National Toxicology Program (NTP) Sixth Annual Report on Carcinogens or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs, Vols 1-53 and Supplements 1-8, or by OSHA;

(H) Any generally applicable precautions for safe handling and use which are known to the manufacturer, importer, or employer preparing the material safety data sheet, including the appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for cleanup of spills and leaks;

(I) Any generally applicable control measures which are known to the manufacturer, importer or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

(J) Emergency and first-aid procedures;

(K) The date of preparation of the material safety data sheet or the last change to it;

(L) The name, address and telephone number of the manufacturer, importer, employer, or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous substance and appropriate emergency procedures, if necessary; and,

(M) A description in lay terms, if not otherwise provided, on either a separate sheet or with the body of the information specified in this section, of the specific potential health risks posed by the hazardous substance intended to alert any person reading the information.

(3) If no relevant information is found for any given category on the material safety data sheet, the manufacturer, importer, or employer preparing the material safety data sheet shall mark it to indicate that no information was found. If the category is not applicable to the hazardous substance involved, the space shall be marked to indicate that.

(4) Where complex mixtures have similar hazards and contents (i.e., the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the manufacturer, importer or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

(5) The manufacturer, importer or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the manufacturer, importer, or employer become aware of any significant information regarding the hazards of a substance, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the substance is not currently being produced or imported, the manufacturer or importer shall add the information to the material safety data sheet before the substance is introduced into the workplace again.

(6) Manufacturers or importers shall ensure that distributors and purchasers of hazardous substances are provided an appropriate material safety data sheet with their initial shipment, and with the first shipment after a material safety data sheet is updated. The manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the purchaser prior to or at the time of the shipment. If the material safety data sheet is not provided with the shipment, the purchaser shall obtain one from the manufacturer, importer, or distributor as soon as possible.

(7) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and purchasers of hazardous substances.

(8) The employer shall maintain copies of the required material safety data sheets for each hazardous substance in the workplace, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s).

(9) Where employees must travel between workplaces during a workshift, i.e., their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

(10) Material safety data sheets may be kept in any form, including operating procedures, and may be designed to cover groups of hazardous substances in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous substances. However, the employer shall ensure that in all cases the required information is provided for each hazardous substance, and is readily accessible during each work shift to employees when they are in their work area(s).

(11) Material safety data sheets shall also be made readily available, upon request, to designated representatives, and to the Chief, in accordance with the requirements of section 3204(e). NIOSH and the employee's physician shall also be given access to material safety data sheets in the same manner.

(12) If the material safety data sheet, or any item of information required by section 5194(g)(2), is not provided by the manufacturer or importer, the employer shall:

(A) Within 7 working days of noting this missing information, either from a request or in attempting to comply with section 5194(g)(1), make written inquiry to the manufacturer or importer of a hazardous substance responsible for the material safety data sheet, asking that the complete material safety data sheet be sent to the employer. If the employer has made written inquiry in the preceding 12 months as to whether the substance or product is subject to the requirements of the Act or the employer has made written inquiry within the last 6 months requesting new,

revised or later information on the material safety data sheet for the hazardous substance, the employer' need not make additional written inquiry.

(B) Notify the requester in writing of the date that the inquiry was made, to whom it was made, and the response, if any, received. Providing the requester with a copy of the inquiry sent to the manufacturer, producer or seller and a copy of the response will satisfy this requirement.

(C) Notify the requester of the availability of the material safety data sheet within 15 days of the receipt of the material safety data sheet from the manufacturer, producer or seller or provide a copy of the material safety data sheet to the requester within 15 days of the receipt of the material safety data sheet from the manufacturer, producer or seller.

(D) Send the Director a copy of the written inquiry if a response has not been received within 25 working days.

(13) The preparer of a material safety data sheet shall provide the Director with a copy of the material safety data sheet. Where a trade secret claim is made, the preparer shall submit the information specified in section 5194(i)(15).

(h) Employee Information and Training.

(1) Employers shall provide employees with information and training on hazardous substances in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area. Information and training may relate to general classes of hazardous substances to the extent appropriate and related to reasonably foreseeable exposures of the job.

(2) Information and training shall consist of at least the following topics:

(A) Employees shall be informed of the requirements of this section.

(B) Employees shall be informed of any operations in their work area where hazardous substances are present.

(C) Employees shall be informed of the location and availability of the written hazard communication program, including the list(s) of hazardous substances and material safety data sheets required by this section.

(D) Employees shall be trained in the methods and observations that may be used to detect the presence or release of a hazardous substance in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous substances when being released, etc.).

(E) Employees shall be trained in the physical and health hazards of the substances in the work area, and the measures they can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous substances, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.

(F) Employees shall be trained in the details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

(G) Employers shall inform employees of the right:

1. To personally receive information regarding hazardous substances to which they may be exposed, according to the provisions of this section;

2. For their physician or collective bargaining agent to receive information regarding hazardous substances to which the employee may be exposed according to provisions of this section;

3. Against discharge or other discrimination due to the employee's exercise of the rights afforded pursuant to the provisions of the Hazardous Substances Information and Training Act.

(3) Whenever the employer receives a new or revised material safety data sheet, such information shall be provided to employees on a timely basis not to exceed 30 days after receipt, if the new information indicates significantly increased risks to, or measures necessary to protect, employee health as compared to those stated on a material safety data sheet previously provided.

(i) Trade Secrets.

(1) The manufacturer, importer or employer may withhold the specific chemical identity of a hazardous substance from the material safety data sheet, provided that:

(A) The claim that the information withheld is a trade secret can be supported;

(B) Information contained in the material safety data sheet concerning the properties and effects of the hazardous substance is disclosed;

(C) The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and,

(D) The specific chemical identity is made available to health or safety professionals, employees, and designated representatives in accordance with the applicable provisions of this subsection.

(2) Where a physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous substance is necessary for emergency or first-aid treatment, the manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret substance to that physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The manufacturer, importer, or employer may, require a written statement of need and confidentiality agreement, in accordance with the provisions of sections 5194(i)(3) and (4), as soon as circumstances permit.

(3) In non-emergency situations, a manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under section 5194(i)(1), to a health or safety professional (i.e., physician, nurse, industrial hygienist, safety professional, toxicologist, or epidemiologist) providing medical or other occupational health services to exposed employee(s), and to employees and designated representatives, if:

(A) The request is in writing;

(B) The request describes with reasonable detail one or more of the following occupational health needs for the information:

1. To assess the hazards of the substances to which employees will be exposed;
2. To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;
3. To conduct pre-assignment or periodic medical surveillance of exposed employees;
4. To provide medical treatment to exposed employees;
5. To select or assess appropriate personal protective equipment for exposed employees;
6. To design or assess engineering controls or other protective measures for exposed employees; and,
7. To conduct studies to determine the health effects of exposure.

(C) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health or safety professional, employee or designated representative to provide the occupational health services described in section 5194(i)(3)(B):

1. The properties and effects of the substance;
2. Measures for controlling workers' exposure to the substance;
3. Methods of monitoring and analyzing worker exposure to the substance; and,
4. Methods of diagnosing and treating harmful exposures to the substance;

(D) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

(E) The health or safety professional, employee, or designated representative and the employer or contractor of the health or safety professional's services (i.e., downstream employer, labor organization, or individual employee), agree in a written confidentiality agreement that the health or safety professional, employee, or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to the Director, as provided in section 5194(i)(6), except as authorized by the terms of the agreement or by the manufacturer, importer, or employer.

(4) The confidentiality agreement authorized by section 5194(i)(3)(D) shall not include requirements for the posting of a penalty bond.

(5) Nothing in this standard is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(6) If the health or safety professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to the Director, then the manufacturer, importer, or employer who provided the information shall be informed by the health or safety professional, employee, or designated representative prior to, or at the same time as, such disclosure.

(7) If the manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

(A) Be provided to the health or safety professional, employee, or designated representative within thirty days of the request;

(B) Be in writing;

(C) Include evidence to support the claim that the specific chemical identity is a trade secret;

(D) State the specific reasons why the request is being denied; and,

(E) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(8) The health or safety professional, employee, or designated representative whose request for information is denied under section 5194(i)(3) may refer the request and the written denial of the request to the Director for consideration.

(9) When a health or safety professional, employee, or designated representative refers the denial to the Director under section 5194(i)(8), or upon the Director's own initiative when receiving information pursuant to section 5194(g)(13) which is claimed to be a trade secret, the Director shall consider the evidence to determine if:

(A) The manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

(B) The health or safety professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and,

(C) The health or safety professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

(10) If the Director determines that the specific chemical identity requested under section 5194(i)(3) is not a bona fide trade secret, or that it is a trade secret but the requesting health or safety professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the manufacturer, importer, or employer will be subject to citation by the Director. The Director shall so notify the manufacturer, importer, or employer by certified mail.

(11) The manufacturer, importer, or employer shall have 15 days after receipt of notification under section 5194(i)(10) to provide the Director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(12) The Director shall determine whether such information is protected as a trade secret within 15 days after receipt of the justification and statement required by section 5194(i)(11), or if no justification and statement is filed, within 30 days of the original notice, and shall notify the employer or manufacturer and any party who has requested the information pursuant to the California Public Records Act of that determination by certified mail. If the Director determines that the information is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be available to the public.

(13) Prior to the date specified in the final notice provided pursuant to section 5194(i)(12), a manufacturer, importer, or employer may institute an action in an appropriate superior court for a declaratory judgment as to whether such information is subject to protection from disclosure.

(14) If a manufacturer, importer, or employer demonstrates to the Director that the execution of a confidentiality agreement as provided for by section 5194(i)(10) would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Director may issue such orders to impose such additional limitations or conditions upon the disclosure of the requested information as may be appropriate to assure that the occupational health services are provided without an undue risk of harm to the manufacturer, importer, or employer.

(15) Notwithstanding the existence of a trade secret claim, a manufacturer, importer, or employer shall disclose to the Director the specific chemical identity of any hazardous substance in a product for which trade secrecy is claimed. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Director so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(16) Nothing in section 5194(i) shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

(k) Appendices. (omitted)

NOTE: Authority cited: Sections 50.7, 142.3 and 6398, Labor Code. Reference: Sections 50.7, 142.3 and 6361-6399.7, Labor Code; Sections 25249.6, 25249.7, 25249.8, 25249.10, 25249.11, 25249.12 and 25249.13, Health and Safety Code; California Lab. Federation v. Occupational Safety and Health Stds. Bd. (1990) 221 Cal.App.3d 1547 [271 Cal. Rptr. 310]; and United Steelworkers of America v. Auchter (3d Cir. 1985) 763 F.2d 728.