

**FINAL STATEMENT OF REASONS FOR THE
AMENDMENT OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTION 14300.2**

UPDATE OF INFORMATION IN THE INITIAL STATEMENT OF REASONS

None. The Initial Statement of Reasons including an informative digest is included in this file.

DETERMINATION OF MANDATE

The proposed changes to Title 8, Section 14300.2 do not impose a mandate on local agencies or school districts, as indicated in the Initial Statement of Reasons.

DETERMINATION OF ALTERNATIVES

Division of Occupational Health and Safety (DOSH or Cal/OSHA), a division within the Department of Industrial Relations, has determined that no reasonable alternatives it considered or that have otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected small businesses than the proposed action, or would be more cost-effective to affected small businesses and equally effective in implementing the statutory policy or other provision of law.

RESPONSE TO COMMENTS RESULTING FROM THE 45-DAY PUBLIC COMMENT PERIOD AND PUBLIC HEARING

DOSH solicited written comments on the proposed amendment in the following manner: (1) written correspondence, either by electronic mail (email or facsimile) or traditional mail or (2) orally presented comments during the public hearing held in Sacramento on May 11, 2015. During the initial 45-day comment period, DOSH did not receive any written public comment.

A public hearing was held on May 11, 2015 at 10:00 a.m. at DOSH's Sacramento Office. One interested party appeared and presented comment at the public hearing.

<i>Number</i>	<i>Commentator(s)</i>	<i>Representation</i>
1	Michael Musser	California Teachers Association

The following summarizes and responds to Mr. Musser comment.

Comment: Mr. Musser expressed concerns with Education being on the list of exempted industries. Some aspects of education do have higher injury rates such as maintenance, janitorial, food preparation and other support services. He recognized that the proposal is the same as federal language and did not expect any changes to the proposal at this time. However, Mr. Musser requested that DOSH see if something could be done either in follow-up rulemaking or other guidance to address his concerns about those subsets within the educational industry.

Response: DOSH thanks Mr. Musser's comment. For the reasons stated below, DOSH is not making any changes to the proposed amendments to accommodate Mr. Musser's comment.

Under OSHA's recordkeeping regulations, employers are required to prepare and maintain records of serious occupational injuries and illness. However, two classes of employers have been partially exempt from routinely keeping injury and illness records. First, as provided in 29 C.F.R. Section 1904.1, employers with 10 or fewer employees at all times during the previous calendar year have been partially exempt from keeping OSHA injury and illness records. Second, as provided in 29 C.F.R. Section 1904.2, establishments in certain low hazard industries have been partially exempt from keeping annual OSHA injury and illness records unless specifically asked to do so. In 1982, OSHA established the original list of partially-exempt industries by identifying major industry groups with relatively low rates of occupational injuries and illnesses. Establishments were partially exempt if the three-year-average lost workdays case injury rate for their major industry group was 75 percent or less of the overall three-year average.

On January 19, 2001, OSHA revised and updated the list of partially exempt industries. Only those industries that were classified within SIC major industry groups 52-89 and that had an average Lost Workday Injury and Illness (LWDII) rate at or below 75 percent of the three-year-average national LWDII rate for private industry were eligible to be partially exempt. Educational Services industry (schools, colleges, universities and libraries) was one of the partially-exempt industries in Standard Industrial Classification (SIC) code 82.

On January 1, 2015, OSHA amended Section 1904.2 and Appendix A to Section 1904, Subpart B. As part of this revision, OSHA further updated the list of partially exempt industries. The updated list is now based on an employer's North American Industry Classification System (NAICS) code. Educational Services industry under a single SIC code is now divided among several NAICS industries as follows:

NAICS Code	Industry
6113	Colleges, Universities, and Professional Schools.
6114	Business Schools and Computer and Management Training.
6115	Technical and Trade Schools.
6116	Other Schools and Instruction.
6117	Educational Support Services.

Mr. Musser expressed his general concerns about certain subgroups within the Educational Services industry but is not seeking any specific changes relating to those subgroups or the Educational Services industry. It is acknowledged that lower-hazard industries are not free of hazards that can injure or kill workers. OSHA's new list of partially-exempt industries is based on Bureau of Labor Statistic (BLS) 2007-2009 injury/illness data. There is no data or other information showing that the above industries or those subgroups mentioned by Mr. Musser in California have a higher injury/illness rate in California that would justify deviating from OSHA's exemption of the above industry groups.

Moreover, although employers in partially-exempt industry groups are not required to routinely keep injury and illness records, they must keep such records if requested to do so by Bureau of Labor Statics (BLS), OSHA, or DOSH/Cal OSHA. Additionally, all employers regardless of partial exemptions due to industry group or company size still must report all work-related fatalities, inpatient hospitalizations, amputations, and losses of an eye to DOSH.

OSHA expects all State Plan states such as California to adopt a regulation or standard that is either identical to or at least as effective as the amended 29 C.F.R. Section 1904.2. Accordingly, DOSH proposes to adopt the federal amendments without any changes.