

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

**Proposed Amendments to California Code of Regulations  
Title 8, Division 1, Chapter 7, Subchapter 1, Article 2, Section 14300.41, Appendix  
H and Appendix I**

**Subject Matter of Proposed Rulemaking: Recording and Reporting of  
Occupational Injuries and Illnesses.**

**UPDATED INFORMATIVE DIGEST**

The Division of Occupational Safety and Health (“The Division”) has made no proposed amendments or revisions to the proposed regulations other than those previously discussed in the Informative Digest/Policy Statement Overview of the Notice of Proposed Rulemaking.

**FINAL STATEMENT OF REASONS**

**UPDATE OF INITIAL STATEMENT OF REASONS**

The Division has deleted three NAICS codes from Appendix I in the proposed text of the regulation as non-substantive, 4529, Other general merchandise stores, 4542, Vending machine operators, and 7132, Gambling industries.

Part 1904 of Title 29 of the Code of Federal Regulations (CFR) (“Part 1904”) sets forth the federal requirements for employers to record and report their employees’ occupational injuries and illnesses. Pursuant to the federal Occupational Safety and Health Act of 1970 (29 USC § 651 et seq.) all states with occupational safety and health “state plans” must amend their own work-related injury and illness reporting and recording standards to ensure that they are “substantially identical” to the new federal standards (29 CFR section 1904.37(a); see also 29 CFR §§ 1902.3(j), and 1902.7.) California is a state with an approved occupational safety and health state plan. The Department of Industrial Relations’ Division of Occupational Safety and Health (“the Division”) is the agency responsible for administering and enforcing California’s state plan. By statute, the Division is responsible for ensuring that California’s regulations governing employers’ work-related injury or illness reports and records are amended so that they are “substantially identical to the requirements” in Part 1904. Under Part 1904, State Plan requirements may be more stringent than or supplemental to the Federal requirements, but because of the unique nature of the national recordkeeping program, States must consult with and obtain approval of any such requirements (29 CFR section 1904.37(b)(2).). In this case, California has not consulted with or obtained approval from the Federal agency to include the three additional NAICS codes in Appendix I and

thus does not possess the authority to add the additional NAICS codes. Furthermore, it was not the Division's intent to add additional NAICS codes to Appendix I, but to adopt the new appendix which was identical to the federal regulation Appendix B to subpart E of 29 CFR section 1904.41. The inadvertent inclusion of the additional NAICS codes was done in error and was a typo.

## **LOCAL MANDATE DETERMINATION**

As indicated in the Initial Statement of Reasons, the proposed regulations do not impose a mandate on local agencies or school districts.

## **REASONABLE ALTERNATIVES DETERMINATION**

The Division has determined that no reasonable alternatives it considered or that have otherwise been identified and brought to its attention would be (1) more effective in carrying out the purpose for which the action is proposed, or (2) as effective and less burdensome to affected small business than the proposed action, or (3) more cost-effective to affected small businesses and equally effective in implementing the federal OSHA mandates regarding electronic reporting of occupational injuries and illnesses.

## **SUMMARY AND RESPONSES TO COMMENTS RESULTING FROM THE 45-DAY PUBLIC COMMENT PERIOD AND PUBLIC HEARING**

On March 8, 2024, the Division sent via e-mail and U.S. Mail the Notice of Proposed Regular Rulemaking to all interested persons who requested notice. On March 8, 2024, the Division published the Notice of Proposed Regular Rulemaking, Initial Statement of Reasons, Text of Proposed Regulation, and Appendix I ("Proposed Rulemaking documents") on its website. The Notice of Proposed Rulemaking was published in the California Regulatory Notice Register on March 8, 2024, Number 10-Z, pages 260-266. The Division solicited written comments on the proposed regulations in the following manner: (1) orally presented comments during the public hearing held in Oakland, California on April 23, 2024, or (2) written correspondence, either by electronic mail or traditional mail, submitted by 11:59 pm on April 23, 2024. A summary of the submitted written and oral comments and the Division's responses are below.

### **A. Oral Comments at Public Hearing – April 23, 2024**

The Division received oral comments from commenter – Jane Thomason of California Nurses Association/National Nurses United – during the April 23, 2024, public hearing on the proposed regulation.

Oral Comment No. A.1.1 – In her oral comments, Ms. Thomason stated that the California Nurses Association/National Nurses United supports the proposed regulations because they would bring California into compliance with the federal Occupational Safety and Health Administration ("federal OSHA") reporting rule and

enables California to maintain their state plan approval. Ms. Thomason stated that the rule would expand access to timely, establishment-specific injury and illness data, which would allow both federal OSHA and the Division to direct its enforcement and compliance outreach to establishments where workers are of greater risk.

Response to Oral Comment No. A.1.1 – The Division thanks Ms. Thomason for her comments. The Division has not made any amendments to the proposed regulation based on these comments.

The Division received oral comments from commenter – Steve Johnson of Associated Roofing Contractors of the Bay Area Counties, Inc. – during the April 23, 2024, public hearing on the proposed regulation.

Oral Comment No. A.2.1 –In oral comments, Mr. Johnson stated during his oral comments concerns over employee privacy and the collection and disclosure of employee name, accident information, employee personal information, medical information and treatment information from Forms 300 and 301. Mr. Johnson stated that the Division can collect accident information in response to an accident through a document request following an inspection and thus proposed amendments are unnecessary. Mr. Johnson stated that California’s need to be at least as effective as the new or revised federal standard, does not mean that it must be exactly equivalent or identical.

Response to Oral Comment No. A.2.1 – The Division thanks Mr. Johnson for his comments. The Division declines to further amend the proposed regulation based on these comments. To maintain the California State plan, amendments are necessary in order to be at least as effective as federal OSHA.

Employers are only required to submit information if they have 100 or more employees in the previous year and are listed in one of the industries in Appendix I. Employers listed in Appendix I are a subset of those employers listed in Appendix H, which requires establishments with 20-249 employees which are classified in Appendix H to submit information from their Form 300A annually to federal OSHA. All the establishments which would be required to submit information from their Forms 300 and 301 to federal OSHA under the proposed amendments were already required to submit information from their Forms 300A.

Under the proposed regulation, employers are not required to submit the employee’s name (Field 1), employee address (Field 2), name of the physician or other health care professional (Field 6), facility name and address if treatment was given away from the worksite (Field 7) from the Form 301.

Federal OSHA has implemented multiple measures to protect the privacy of individuals under the final rule. As mentioned above OSHA will not collect much of the information in which Mr. Johnson has expressed concerns over.

The Division received oral comments from commenter – Bryan Little of California Farm Bureau – during the April 23, 2024, public hearing on the proposed regulation.

Oral Comment No. A.3.1 – In his oral comments, Mr. Little stated he had the same concerns/comments as those mentioned by Mr. Johnson.

Response to Oral Comment No. A.3.1 – The Division thanks Mr. Little for his comments. Please see the Response to Oral Comments No. A.2.1. The Division declines to further amend the proposed regulation based on these comments.

Oral Comment No. A.3.2 – Mr. Little suggested in his oral comments that the Division further clarify the NAICS codes under 11, Agriculture, forestry, fishing and hunting on Appendix H to include the specific types of industries under those categories that are required to report certain information to Federal OSHA.

Response to Oral Comment No. A.3.2 – The Division thanks Mr. Little for his comments. The Division declines to further amend the proposed regulation based on these comments. The proposed regulation does not contemplate any updates or changes to NAICS Code 11 within Appendix H at this time. As recommended in the Final Rule to assist employers in determining their NAICS code, employers can use the reports they make to state workforce agencies as a starting point for determining their NAICS. Federal OSHA currently has a look-up app at <https://www.osha.gov/itareportapp> to help employers determine if their establishment is required to submit data to Federal OSHA, which includes the employer's NAICS code.

#### B. Written Comments Received in Connection with the 45-Day Hearing Notice

The Division received written comments from commenter – Puneet Maharaj of California Nurses Association/National Nurses United – during the 45-day comment period.

Written Comment No. B.1.1 – In her written comments, which were dated April 23, 2024, Ms. Maharaj commented the California Nurses Association/National Nurses United supports the proposed regulation because they would bring California into compliance with the federal Occupational Safety and Health Administration (“federal OSHA”) reporting rule and enables California to maintain their state plan approval. The public availability of data on workplace injuries and illnesses allows stakeholders to address patterns in workplace hazards and to compare employers’ health and safety records within the same industry. Ms. Maharaj commented the rule would expand access to timely, establishment-specific injury and illness data, which would allow both federal OSHA and the Division to direct its enforcement and compliance outreach to establishments where workers are of greater risk.

Response to Written Comment No. B.1.1 – The Division thanks Ms. Maharaj for her comments. The Division has not made any amendments to the proposed regulation based on these comments.

The Division received written comments from commenter – Jassy Grewal of United Food & Commercial Workers Union (“UFCW”), Western States Council – during the 45-day comment period.

Written Comment No. B.2.1 – In her written comments, which were dated April 22, 2024, Ms. Grewal commented NAICS 456110, Pharmacies and Drug Retailers should be added to the list of Designated Industries in both Appendices H and I and that even though state plans are required to be “substantially identical”, they have the ability to be more stringent than federal requirements. Ms. Grewal further comments that California includes two industries on Appendix H that are not included under the corresponding federal regulation, NAICS 4529 (Other General Merchandise Stores) and 7213 (Rooming and Board Houses).

Response to Written Comment No. B.2.1 – The Division thanks Ms. Grewal for her comments. The Division has not made any amendments to the proposed regulation based on these comments. The final rule issued by federal OSHA discusses the methods and metrics used to determine the industries that would be included on Appendix B to subpart E and our corresponding Appendix I. Federal OSHA will continue reviewing injury and illness data compiled from 300A submissions, Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illnesses (SOII), and Census of Fatal Occupational Injuries (CFOI) and if there is an indication that industries not listed on Appendix B are becoming more hazardous, federal OSHA could consider engaging in notice-and-comment rulemaking to update appendix B (see 88 FR 47272).

California has not added any additional NAICS codes which are not listed in Appendix A to subpart E. As discussed in the final rule, Appendix A was updated from 2012 NAICS codes to 2017 NAICS codes. (see 88 FR 47264) The update included the removal of NAICS codes 4529 and 7213. Under 2017 NAICS codes, 4529 is now included in NAICS industry 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters). Additionally, NAICS code 7213 was removed due to Rooming and Boarding Houses being exempt from the requirements of the regulation to routinely keep injury and illness record and was mistakenly included in Appendix A and correspondingly in Appendix H. (see 88 FR 47265, n.3) The update in federal OSHA’s final rule makes these corrections.