

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

INITIAL STATEMENT OF REASONS

**Proposed Amendments to California Code of Regulations
Title 8, Division 1, Chapter 7, Subchapter 1, Article 2, Sections 14300.35,
14300.41., Appendix B, Appendix E, and Appendix H**

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

SUMMARY

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. On May 12, 2016, the United States Occupational Safety and Health Administration (“OSHA”) issued a final rule amending several sections of Part 1904, including Section 1904.41. These amendments revised some of the requirements for employers to record work-related injury and illness data relating to their employees and how to report it to OSHA.

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), 1902.7, and 1956.10(i).) California is a state with its own approved occupational safety and health state plan. The Department of Industrial Relation’s Division of Occupational Safety and Health (“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.

The proposed amendments to Section 14300.41 of Title 8 of the California Code of Regulations are necessary to ensure that California’s requirements for employers’ recording and reporting of work-related injuries or illnesses are “substantially identical” to Part 1904’s federal recording and reporting requirements that are currently being implemented by the federal Occupational Safety and Health Administration (hereinafter “OSHA”). The proposed amendments also would make minor, non-substantive changes to Section 14300.35 to clarify existing law requiring employers to inform their employees how to report work-related injuries and illnesses and to provide their

employees access to injury and illness records. The proposed amendments would also make other minor, non-substantive changes to Section 14300.35 and Appendices B and E, changing references from “Standard Industry Code Classification” (“SIC Code”) industry codes to a North American Industry Classification System Code (“NAICS Code”) industry codes so that the section and appendices are consistent with the other recently amended Title 8 sections that had also replaced SIC Code references with NAICS Code references. The minor changes to Section 14300.35 would have no regulatory effect.

PROBLEM BEING ADDRESSED BY/SPECIFIC PURPOSE OF THE PROPOSED RULEMAKING

The federal Occupational Safety and Health Act of 1970 covers most private-sector employers and their employees in all 50 states, either directly through OSHA or through a “State plan” approved by OSHA under 29 CFR §§ 1902 *et seq.* A State plan is an OSHA-approved occupational safety and health program operated by an individual state instead of by federal OSHA. OSHA approves and monitors all State plans and provides funding for those plans. If OSHA establishes a new or revised standard, a State plan state must adopt a standard at least as effective within six months. With regard to OSHA’s standards concerning employers’ duties to record and report work-related injuries or illnesses, the state must adopt standards that are “substantially identical” to the federal standards. (29 CFR §§ 1902.3(j), 1902.7, 1904.37(a), and 1956.10(i).)

On May 12, 2016, OSHA issued a final rule amending the requirements for employers to record and report work-related injuries and illnesses set forth in 29 CFR § 1904.41.

OSHA’s amendment to 29 CFR § 1904.41 requires certain employers to submit electronically their injury and illness data to OSHA or its designees each year.

The Division of Labor Standards and Research, formerly a division within the Department of Industrial Relations, previously promulgated California’s regulations governing the reporting and recording of work-related injuries and illnesses. Pursuant to a department reorganization in 2012, the authority to promulgate and amend these regulations has since passed to the Division of Occupation Safety and Health. (Labor Code § 150(b).) Because OSHA has issued a final rule amending the federal injury and illness reporting standard, the Division must now amend 8 CCR § 14300.41 so that California’s regulations are “substantially identical” to the corresponding federal regulations.

The proposed amendments would also make minor, non-substantive changes to Section 14300.35 to clarify existing law requiring employers to inform their employees

how to report work-related injuries and illnesses and to provide their employees access to injury and illness records. The minor changes to Section 14300.35 would have no regulatory effect.

NECESSITY

California is a state plan state under 29 CFR 1902 *et seq.* The Department of Industrial Relations must take all steps necessary to prevent withdrawal of approval for California's state plan by the Federal Government. (Labor Code § 50.7.) Generally, OSHA expects State plans to adopt corresponding regulations within six months of the adoption of a new or revised federal standard. OSHA's final rule amended the federal occupational injury and illness reporting requirements set forth in 29 CFR section 1904.41. As such, the Division must adopt work-related injury and illness recording and reporting standards that are "substantially identical" to the federal requirements set forth in 29 CFR, Part 1904. The proposed amendments are necessary for California to comply with this federal mandate; California must amend its State plan regulation that corresponds to this federal injury and illness reporting and recording regulation: 8 CCR section 14300.41.

It is also necessary to make minor amendments to Section 14300.35 to clarify existing law requiring employers to inform their employees how to report work-related injuries and illnesses and to provide their employees access to injury and illness records.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR OTHER DOCUMENTS RELIED ON

In preparing the Proposed Rulemaking, the Division relied upon Federal OSHA's "Final rule revising OSHA's Occupational Injury and Illness Recording and Reporting Requirements (Improving tracking of workplace injuries and illnesses.)" This document may be found at 81 Federal Register 29623, pages 29623 -29694:

<https://www.federalregister.gov/articles/2016/05/12/2016-10443/improve-tracking-of-workplace-injuries-and-illnesses>

The Division also relied upon "Attachment B" to the Economic and Fiscal Impact Statement (Std. 399) for this rulemaking, which sets forth the number and types of employers that will be affected by the proposals.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified or brought to the attention of the Division that would lessen the impact of the proposed amendments on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

The proposed amendments would require affected employers to have access to electronic equipment and internet access to transmit the required work-related injury and illness data to OSHA or its designees.

BENEFITS OF THE PROPOSED RULEMAKING

The electronic data-reporting provisions in the proposed amendments will provide more timely and accurate reporting for the work-related injury and illness data that employers are required to record and report under Article 2 (Employer Records of Occupational Injury or Illness). These provisions expand OSHA's access to timely establishment-specific work-related injury and illness data, thus allowing OSHA (and the Division) to direct more of its enforcement and compliance assistance resources to those establishments where workers are at greatest risks.

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

- Encourage employers to abate hazards to prevent work-related injuries and illnesses to their workers so as to preserve their reputations as good places to work or do business with;
- Allow establishments to gauge the effectiveness of their injury and illness prevention programs by comparing their work-related injury and illness rates with those of comparable establishments;
- Allow investors to compare work-related injury and illness rates among competing establishments when looking for investment opportunities;
- Allow members of the public to make more informed decisions on what businesses to patronize based on competing establishments' ability to address workplace hazards impacting their workers; and
- Provide better information to job-seekers regarding the work-related injury and illness rates of prospective employers.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED AMENDMENTS

§ 14300.35. Employee Involvement.

The proposed amendments of 8 CCR Section 14300.35 clarify existing law requiring employers to inform their employees how to report work-related injuries and illnesses and to provide their employees access to injury and illness records. The proposed amendments also update the listed industry code from a “Standard Industry Code Classification” (“SIC Code”) to a North American Industry Classification System Code (“NAICS Code”) so that this Title 8 section is consistent with the other recently amended Title 8 sections that had also replaced SIC Code references with NAICS Code references. These proposed amendments to 8 CCR Section 14300.35 have no regulatory effect.

The Proposed Rulemaking would make the following specific changes to Section 14300.35:

- Subsection (a)(1): This section relates to the requirement that employers inform each employee about the duty to report work-related injuries and illnesses. The Proposed Rulemaking would add the phrase “a work-related” to Section 14300.35(a)(1) to clarify that this section applies only to work-related injuries and illnesses.
- Subsection (a)(2): The Proposed Rulemaking would clarify what types of injury and illness records employers would be required to make available to their employees and their representatives
- Subsection (b)(2)(C): This subsection amends the SIC Code (or “Standard Industry Code”) reference in the exception to this subsection to instead reference the North American Industry Classification System (“NAICS”) code for the industry referenced in the subsection. The Division had previously amended 8 CCR Section 14300.2 and its appendix to use NAICS codes instead of SIC codes because other governmental agencies, including OSHA, have transitioned to using NAICS codes in its datasets. This proposed amendment would make this subsection consistent with 8 CCR Section 14300.2, in that it would also use NAICS codes when referring to specific industries. It would also make conforming formatting changes by adding the word “seven” to the numeral 7 in the phrase “seven (7) calendar days.”
- Subsection (b)(2)(E): This subsection amends the SIC Code (or “Standard Industry Code”) reference in the exception to this subsection to instead reference the North American Industry Classification System (“NAICS”) code for the industry referenced in the subsection. The Division had previously amended 8 CCR Section 14300.2 and its appendix to use NAICS codes instead of SIC codes. This proposed amendment would make this subsection consistent with 8 CCR Section 14300.2, in that it would also use NAICS codes when referring to specific industries. It would also make conforming formatting changes by adding the word “seven” to the numeral 7 in the phrase “seven (7) calendar days.”

- The “Note: Authority cited” subsection of this regulation would specify California Labor Code section 150(b) as an additional authority for the regulation. California Labor Code section 150(b) went into effect on June 27, 2012, reassigning the responsibilities of the Division of Labor Statistics and Research specified in Chapter 7, Subchapter 1 of Title 8 of the California Code of Regulations to the Division of Occupational Safety and Health.

§ 14300.41. Electronic Submission of Injury and Illness Records to OSHA.

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

The proposed amendments would make the following specific changes to Section 14300.41:

- The heading of Section 14300.41 would be changed from “Annual OSHA Injury and Illness Survey” to “Electronic Submission of Injury and Illness Records to OSHA.” The language of this proposed amendment is necessary to track the language in the heading of 29 CFR Section 1904.41 and to reflect more accurately the topic of Section 14300.41 following the changes described below.
- Subsection (a)(1) would require employers in designated industries that had 250 or more employees at any time during the previous calendar year to submit electronically certain occupational injury and illness data to OSHA once per year by the date listed in Section 14300.41(c). The language of this proposed amendment is necessary to track the requirements in 29 CFR Section 1904.41(a)(1) that OSHA is currently implementing.
- Subsection (a)(2) would require employers in designated industries that had 20 to 249 employees at any time during the previous calendar year to submit electronically certain occupational injury and illness data to OSHA once per year by the date listed in Section 14300.41(c). The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(a)(2).

Subsection (a)(3) would require employers to submit occupational injury and illness records to OSHA if notified by OSHA to do so. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(a)(3).

- Subsection (a)(4) would require employers to provide the Employer Identification Number (“EIN”) for each establishment subject to the electronic reporting requirements. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(a)(4).
- Subsection (b)(1) would specify which categories of employers must routinely submit their occupational injury and illness data to OSHA. If an employer has 250 or more employees at any time during the preceding calendar year, and is required to keep records, then the employer must submit information from the Form 300A to OSHA once a year. Second, if an employer has between 20 and 249 employees and is classified as an industry listed in the proposed new Appendix H to this section, then the employer must submit information from the Form 300A to OSHA once a year. Employers who do not fall in either of the preceding categories must submit information from injury and illness records to OSHA only in response to a request from OSHA. The language of this proposed amendment is necessary to track the requirements in 29 CFR Section 1904.41(b)(1) that OSHA is currently implementing.
- Subsections (b)(2) would specify the type of occupational injury and illness information that covered employers must submit to OSHA.
- Subsection (b)(3) would specify that part-time, seasonal, and temporary workers are included in the count of an employer’s number of employees that triggers the requirement to report occupational injury and illness data to OSHA. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(b)(3).
- Subsection (b)(4) would specify that if OSHA intends to notify an employer that it must submit occupational injury and illness data as required under Subsection (a)(3), OSHA will notify that employer by mail. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(b)(4).
- Subsection (b)(6) would specify the frequency with which an affected employer must submit its occupational injury and illness data to OSHA. If an employer is required to submit information under paragraph (a)(1) or (a)(2) of Section 14300.41, then it must submit the information once a year. If the employer is submitting information because OSHA notified it to submit information as part of an individual data collection under paragraph (a)(3) of Section 14300.41, then it must submit as often as specified in the notification from OSHA. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(b)(5).
- Subsection (b)(7) would specify how an affected employer must submit its occupational injury and illness data to OSHA. It would specify that employers are required to submit the information electronically through a secure website

provided by OSHA. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(b)(6).

- Subsection (b)(8) would specify that a partially exempt employer is not required to submit its occupational injury and illness data to OSHA unless OSHA notifies the employer in writing that it must submit such information. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(b)(7).
- Subsection (b)(9) would specify that an affected employer located in a State Plan State (like California) must submit its occupational injury and illness data to OSHA as required under this amended regulation. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(b)(8).
- Subsection (b)(10) would specify that an enterprise or corporate office of an affected employer may submit the occupational injury and illness data for the affected employer to OSHA. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(b)(9).
- Subsections (c)(1) and (2) would specify the reporting date deadlines for affected employers to submit their occupational injury and illness data to OSHA. The language of this proposed amendment is necessary to track the language in 29 CFR Section 1904.41(c)(1) and (2).
- The “Note: Authority cited” subsection of this regulation would specify California Labor Code section 150(b) as an additional authority for the regulation. California Labor Code section 150(b) went into effect on June 27, 2012, reassigning the responsibilities of the Division of Labor Statistics and Research specified in Chapter 7, Subchapter 1 of Title 8 of the California Code of Regulations to the Division of Occupational Safety and Health.

Appendices B, E, and H for Title 8 Sections 14300 - 14300.48

- Appendix B for Title 8 Sections 14300-14300.48 will be amended so “Establishment Information” box would require an employer to provide its establishment’s industry NAICS Code (or “North American Industry Classification System” code) rather than its SIC Code (or “Standard Industry Code”). This amendment is necessary to conform Appendix B with other sections in this Article that replaced the outdated SIC Code system with the currently used NAICS Code system.
- Appendix E for for Title 8 Sections 14300-14300.48 will be amended so that Section A.4 of this appendix would require an employer to provide its

establishment's industry NAICS Code (or "North American Industry Classification System" code) rather than its SIC Code (or "Standard Industry Code"). This amendment is necessary to conform Appendix E with other sections in this Article that replaced the outdated SIC Code system with the currently used NAICS Code system.

- For Appendix E, the "Note: Authority cited" subsection would be amended to specify California Labor Code section 150(b) as an additional authority for the appendix. California Labor Code section 150(b) went into effect on June 27, 2012, reassigning the responsibilities of the Division of Labor Statistics and Research specified in Chapter 7, Subchapter 1 of Title 8 of the California Code of Regulations to the Division of Occupational Safety and Health.
- Appendix H for Title 8 Sections 14300-14300.48 will be added to specify which industries are included in the reporting requirements set forth in Subsection (a)(2) for employers that had 20 to 249 employees at any time in the previous calendar year. The language of this proposed appendix is necessary to track the language of Appendix A to Subpart E of 29 CFR Section 1904.41.

ECONOMIC IMPACT ANALYSIS PER GOVERNMENT CODE SECTION 11346.3(b)

Evidence Supporting Finding of No Significant Statewide Adverse Impact Directly Affecting Business: The proposed amendments will not have significant adverse economic impacts on employers.

During its rulemaking process that lead up to the May 12, 2016 final rule, OSHA conducted an economic analysis to determine the economic impact on employers to comply with 29 CFR Sections 1904.41. According to OSHA, the amendments in the final rule will make the following changes to the current recording and reporting requirements in 29 CFR, Part 1904:

- OSHA will require certain establishments that are required to keep injury and illness records under part 1904 to electronically submit the required information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee, on an annual basis.
- OSHA will require all employers who receive notification from OSHA to electronically submit the requested information from their injury and illness records to OSHA or OSHA's designee. Any such notification will be subject to the approval process established by the federal Paperwork Reduction Act.

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

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

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

OSHA's economic analysis of its final rule determined that the average cost to employers who are required to submit their Form 300A data would be \$11.13 per year.¹

Creation or Elimination of Jobs Within the State of California: The Division does not anticipate that the Proposed Rulemaking will result in the creation or elimination of jobs in California.

Creation of New Business, Elimination of Existing Business, or the Expansion of Business in California: The Division does not anticipate that any businesses in California will be created or eliminated because of any financial impact of the Proposed Rulemaking.

The Division anticipates an increase in worker safety with the adoption of the Proposed Rulemaking. Once an employer is made aware of all occupational injuries and illnesses

¹ OSHA arrived at these cost estimates by multiplying the compensation per hour, including wage and fringe benefits, of the employer's personnel expected to perform the task of electronic submission to OSHA by the time required for the electronic submission. In its calculation, OSHA identified the occupational class of "Industrial Health and Safety Specialists" as the representative class of workers who would be expected to transmit electronically the injury and illness data to OSHA. This class of workers had an estimated total compensation (wages and benefits) of \$48.78 per hour. OSHA then determined the amount of time that would be needed per year for covered employers to submit the electronic information.

suffered in its workplace, it is assumed that the employer will implement measures to eliminate the underlying hazards.

**REASONABLE ALTERNATIVES TO THE REGULATON AND THE DIVISION'S
REASON FOR REJECTING SUCH ALTERNATIVES**

The Proposed Rulemaking reconciles the Division's Log 300 regulations to the parts of the recently-amended federal rule that OSHA is currently implementing. Since the Proposed Rulemaking must track the new federal mandates under 29 CFR Section 1904.37(a,) the Division has not identified any reasonable alternatives to the Proposed Rulemaking, including alternatives that would lessen any adverse impact on small business. There have been no alternatives proposed as less burdensome and equally effective in achieving the purpose of the references statutes and federal rule.

Duplication or Conflict with Federal Laws (California Government Code Section 11346.2(b)(7)): The proposed amendments are compatible with 29 CFR Sections 1904.35 and 1904.41.

Inconsistency or Incompatibility with Existing State Regulations: A review of regulations adopted by this and other comparable agencies has been conducted, and the Division has determined that there are no existing comparable state regulations.