

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Occupational Safety and Health**

**NOTICE OF PROPOSED RULEMAKING**

AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 8,  
SECTION 14300.2

**PUBLIC PROCEEDINGS:** Notice is hereby given that the California Department of Industrial Relations, Division of Occupational Safety and Health ("DOSH", "Division", or "Cal/OSHA"), proposes to adopt the amendments to Title 8, Section 14300.2, of the California Code of Regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

**HEARING:** A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following date:

Date: May 11, 2015  
Time: 10:00 a.m. to 5:00 p.m. or conclusion of business  
Place: 2424 Arden Way #495  
Sacramento, CA 95825

**PLEASE BE ADVISED:** All visitors to this building are required to go through a security screening which includes passing through metal detectors, and the x-raying and inspection of all personal belongings.

The building is accessible to persons with mobility impairments. Other disability accommodations are available upon request.

Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the programs of the Division should contact the Disability Accommodation Coordinator or the state-wide Disability Accommodation Coordinator at 1-866-681-1459 (toll free) as soon as possible to request assistance. The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone a chance to speak, public testimony may be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Division requests, but does not require, that any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

**WRITTEN COMMENT PERIOD:** Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Division by 5:00 p.m. on May 11, 2015, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: Ssmith@dir.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation identifier "8 CCR Section 14300.2" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to (916) 483-0572; or
3. By mail or hand-delivery to Steve Smith, Principal Safety Engineer, Cal/OSHA, 2424 Arden Way #495, Sacramento, CA 95825.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Division to provide the author with notice of any proposed changes to the regulation text on which additional comments may be solicited.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

### **Summary of the Proposed Regulations**

#### **Section 14300.2-Partial Exemption for Establishments in Certain Industries**

29 C.F.R. Section 1904.2 requires a State Plan state to adopt rules that are "identical to or at least as effective". The proposed amendments to Section 14300.2 generally track the language and format of Section 1904.2.

Specifically,

- Reference to "a public and private employer" in 14300.2(a)(1) has been eliminated and replaced with "an employer." Section 14300.2 covers all employers and therefore it is not necessary to distinguish between private or public employers.

- Reference to "all of your establishments are classified in the retail, service, finance, insurance or real estate industries" has been replaced with "your business establishment is classified in a specific industry group." This is to recognize and reflect the identical language found in Section 1409.2(a).

- The entire 14300.2(b) entitled "Implementation" has been replaced with a new Implementation section, which mirrors the identical "Implementation" language in Section 1409.2(b) that is based on the new NACIS code.

## Appendix A

- Reference to "public and private employers" has been eliminated and replaced with just "employers." Section 14300.2 covers all employers and therefore it is not necessary to distinguish between private or public employers.

- Reference to "Standard Industrial Classification (SIC) code is replaced with "North American Industry Classification System (NAICS)" as this is the new partially-exempt industry classification standard.

- Reference to "a state agency operating under the authority of OSHA or the BLS", is changed to specifically reference to the Division of Occupational Safety and Health (DOSH) since DOSH is the California state agency operating under the State Plan.

- The word "their" is inserted between "by reason" and "size or industry classification" so the relevant portion now reads: "by reason of their size or industry classification".

## Table I

Partially Exempt Industries List has been modified to mirror the new list of partially exempt industries under Section 1904.2, with the exception of NAICS Code 5121 Motion Picture and Video Industries. California will continue to require employers of establishments in Motion Picture and Video Industries to maintain such records.

## Summary of Existing Laws/Policy Statement Overview

**Problem Statement:** The federal Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 et seq. ["OSH Act"]) covers most private sector employers and their employees in all 50 states either directly through the U.S. Department of Labor's Occupational Safety & Health Administration ("OSHA") or through an OSHA-approved State Plan. A State Plan is an OSHA-approved job safety and health program operated by an individual state instead of federal OSHA. OSHA approves and monitors all State Plans and provides as much as fifty percent of the funding for each state program. State-run safety and health programs must set workplace safety and health standards that are at least as effective as the federal OSHA standards. If OSHA establishes a new standard, the state plans must adopt that standard within 6 months and

employers must comply with the regulations and standards of only the State Plan if there is one that applies to them. See 29 Code of Federal Regulations. Section 1902. California is a State Plan state.

On September 11, 2014, OSHA published a final rule which updates the reporting and recordkeeping requirements for injuries and illness codified at 29 C.F.R. Section 1904.2 (See Federal Register Volume 79, No. 181, pages 56130-56188.) The final rule became effective on January 1, 2015. Under Section 1904.2, certain covered employers are required to prepare and maintain records of serious occupational injuries and illness using the OSHA prescribed form. However, there are two classes of employers that are partially exempt from routinely keeping such records: (1) Employers with ten or fewer employees at all times during the previous calendar year; and (2) Establishments in certain low-hazard industries. The new rule updates the list of low-hazard industries that are partially exempt from keeping OSHA records. The previous list of partially exempt industries was based on the Standard Industrial Classification (“SIC”) code system, but the updated list is based on the NAICS system. NAICS is the standard now used by most federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing and publishing statistical data related to the U.S. business economy. As a result of this change, some employers who were previously exempt from OSHA's record keeping requirements are now required to keep records. The newly affected industries include car dealers, hardware stores, marketing research firms, facilities support services, blood and organ banks, beer, wine and liquor stores, services for the elderly and persons with disabilities, food service contractors, caterers, and bowling alleys, among others.

Section 14300.2 of California’s regulations previously adopted the same list of partially exempt industries promulgated under 29 C.F.R. Section 1904.2 that has now been updated based on a different classification system. Therefore, it has become necessary to amend Section 14300.2 and its Appendix to incorporate the same revisions made under Section 1904.2 in order to bring the state’s regulation into conformity with the federal regulation.

**The Benefits of the Regulation to the Health and Welfare of California Residents, and Increases Worker Safety:**

This proposed amendments increase the benefits to the health and welfare of California residents and worker safety because according to OSHA, switching to the more modern NAICS codes from the seldom-used SIC code system will improve the quality of data collected by decreasing uncertainty in classification, saving time, reducing confusion, and lowering the opportunity for errors in reporting the industry an employer belongs to.

**Evaluation as to Whether the Proposed Amendment Is Inconsistent or Incompatible With Existing State Regulations:**

The Division evaluated the proposed amendments and determined that, if adopted, they will not be inconsistent or incompatible with other existing state regulations. An Internet search of other state agencies' regulations, determined that no other state regulations address the same subject matter.

**AUTHORITY & REFERENCE CITATIONS:**

The Division is proposing to amend Section 14300.2, Title 8 of California Code of Regulations under the authority provided in Sections 50.7, 150 and 6410 of the Labor Code.

**FORMS INCORPORATED BY REFERENCE:** None.

**MANDATED BY FEDERAL LAW OR REGULATIONS:** The proposed amendment is compatible with 29 C.F.R. Section 1904.2, as amended effective January 1, 2015. Pursuant to Labor Code Section 6410, subdivision (b), the Division of Occupational Health and Safety, a division within the Department of Industrial Relations, is responsible for prescribing and providing the forms necessary for maintenance of records of occupational injuries and illnesses required by the OSH Act and its implementing regulations (Section 1900 et seq. of Title 29 of the C.F.R.) The OSH Act is administered by OSHA and covers all employers and their employees in all 50 states, with coverage provided either by the federal OSHA or by an OSHA-approved state job safety and health plan (State Plan). California is a State Plan state and is required to adopt occupational injury and illness recording and reporting requirements that are substantially identical to the requirements of 29 C.F.R. 1904.2. See 29 C.F.R. Sections 1902.3(k), 1904.37, 1954.2, and 1956.10.

**OTHER STATUTORY REQUIREMENTS:** N/A

**LOCAL MANDATE:** The Division has determined that the amended regulation would not impose a mandate on local agencies, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

**FISCAL AND ECONOMIC COST ESTIMATES:**

**A. Fiscal Impact on Local Government:** None. The amendments do not alter the impacts of the existing regulation on local government.

**B. Fiscal Impact on State Government:** None. The amendments do not alter the impacts of the existing regulation on state government.

**C. Fiscal Impacts on Federal Funding of State Programs:** None.

**D. Economic Cost Impacts on Private Persons or Businesses Directly Affected by the Amendments:** There will be fiscal impact on employers with establishments which are no longer exempt from maintaining the yearly work injury and illness records and those which are now exempt from maintaining such records. OSHA recognizes that there is significant diversity among firms with respect to the personnel charged with OSHA recordkeeping responsibilities. Smaller firms may have a bookkeeper perform this function, while larger firms will likely use an occupational health and safety specialist. OSHA has estimated average annualized costs of \$82 per year for employers in industries who will be required to keep records every year.

In connection with amending Section 29 C.F.R. Section 1904.2 to use the NAICS standard, OSHA estimated that, nationwide, 220,000 establishments employing 5.5 million employees will be newly required to maintain records and 160,000 establishments employing 4.1 million employees will now be exempt. OSHA also estimated that initial training of record keepers is expected to require one hour per establishment and will apply only to current partially-exempt establishments that would be newly required to keep records. OSHA's estimates are designed to represent an average across large and small firms and establishments, taking into account both situations where more extensive initial training is provided as well as situations where little or no initial training is done. OSHA also notes that injury and illness recordkeeping development and training can account for much more than just keeping records of injuries and illnesses under 29 CFR Part 1904.2; in other words, these types of administrative functions address not just other OSHA requirements but also requirements for other agencies, such as the Bureau of Labor Statistics and workers' compensation insurers.

There will also be per-establishment costs in completing, posting, and certifying the required form annually. OSHA estimated that 0.47 hours per establishment will be needed to complete and post the required form, and 0.5 hours will be needed to certify the log entries, for a total of 0.97 hours per establishment. This estimate applies on a per-establishment basis to costs for current partially-exempt establishments that would be newly required to keep records and to cost savings for establishments that would no longer be required to keep records. Additionally, there are also costs for each injury and illness recorded. These costs include the costs for completing the required OSHA form, entering each injury and illness on to the required form, and responding to requests for copies of the OSHA form. OSHA estimated that 0.38 hours per recordable injury or illness will be expended to comply with these requirements. This estimate applies to costs for current partially exempt establishments that would be newly required to keep records and to cost savings for establishments that would no longer be required to keep records.

Combining the data of unit time requirements, hourly wages, numbers of establishments, and injury and illness totals, DOSH estimated the expected annualized cost to those employers who will be required to maintain records to be approximately \$17.9 million per year, with the most expensive element being the completion, certification, and posting of the OSHA Form 300A (California equivalent is Cal/OSHA Form 300) of \$11.9 million per year. Combining the data of unit time requirements, hourly wages, number of establishments, and injury and illness totals, OSHA estimated the cost savings for employers who would no longer need to routinely maintain records to be approximately 11.5 million per year. Combining estimated costs and estimated savings, the net cost of the changes in the partial exemption part of the Section 29 C.F.R. 1904.2 is \$6.4 million per year.

According to the Bureau of Labor Statistics, California has 15% of the business establishments in the United States. Applying that percentage to OSHA's determinations, the additional California employers who will be required to maintain such records would have annualized costs totaling approximately \$2.6 million. For those employers who will no longer be required to maintain such records, the annualized cost savings would be approximately \$1.7 million. Thus the net overall cost of the changes in the partial exemption part of Section 14300.2 is approximately \$900,000.00.

**E. Mandate on Local Agencies or School Districts:** None.

**F. Other Non-Discretionary Cost or Savings Imposed Upon Local Agencies:** None.

**G. Effect on Small Businesses:** The proposed amended regulation will affect small businesses. There will be small business employers with establishments which will no longer be exempted from maintaining the yearly work injury and illness records and those which will be exempted from maintaining such records. (Note, however, that the regulation will continue to exempt employers with ten or fewer employees at all times during the previous calendar year.)

**HOUSING COSTS:** The Division has determined that the amended regulation will have no impact on housing costs.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE:** The Division has made a determination that the amended regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as employers in other states will also have to comply with 29 C.F.R. Section 1904.2 or their own corresponding State Plan requirement.

**RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The Division analyzed whether and to what extent this proposal affects the following:

1. The creation or elimination of jobs within the State of California. The Division does not anticipate that any jobs in California will be eliminated due to the financial impact of the proposed regulatory action. The proposed regulation updates the partially exempt industries from maintaining work injury and illness records. It is anticipated that significant costs or expenses will not be incurred by businesses to comply with the proposed amendments that would result in either creation or elimination of jobs within California.

2. The creation of new businesses or the elimination of existing businesses within the State of California. The Division does not anticipate that any businesses in California will be created or eliminated due to the financial impact of the proposed regulatory action.

3. The expansion of businesses currently doing business within the State of California. The Division does not anticipate any businesses in California will be expanded due to the financial impact of the proposed regulatory action.

4. The benefits of the regulation to the health and welfare of California residents, and increases worker safety. This proposal increases the benefits to the health and welfare of California residents and worker safety because according to OSHA, switching to the more modern NAICS codes from the seldom-used SIC code system will improve the quality of data collected by decreasing uncertainty in classification, saving time, reducing confusion, and lowering the opportunity for errors in reporting the industry an employer belongs to.

**COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS:**

In connection with amending Section 29 C.F.R. Section 1904.2 to use the NAICS standard, OSHA estimated that nationwide 220,000 establishments employing 5.5 million employees will be newly required to maintain records and 160,000 establishments employing 4.1 million employees will now be exempt. OSHA also estimates that initial training of record keepers is expected to require one hour per establishment and will apply only to current partially-exempt establishments that would be newly required to keep records. OSHA's estimates are designed to represent an average across large and small firms and establishments, taking into account both situations where more extensive initial training is provided as well as situations where little or no initial training is done. OSHA also notes that injury and illness recordkeeping development and training can account for much more than just keeping records of injuries and illnesses under 29 CFR Part 1904; in other words, these types of administrative functions address not just other OSHA requirements but also requirements for other agencies, such as the Bureau of Labor Statistics and workers' compensation insurers. OSHA estimated average annualized costs of \$82 per year for those employers in industries who will be required to keep records every year.

There will also be per-establishment costs in completing, posting, and certifying the required form annually. OSHA estimated that 0.47 hours per establishment will be needed to complete and post the required form, and 0.5 hours will be needed to certify the log entries, for a total of 0.97 hours per establishment. This estimate applies on a per-establishment basis to costs for current partially-exempt establishments that would be newly required to keep records, and to cost savings for establishments that would no longer be required to keep records. Additionally, there are also costs for each injury and illness recorded. These costs include the costs for completing the required OSHA form, entering each injury and illness on the required form, and responding to requests for copies of the OSHA form. OSHA estimated that 0.38 hours per recordable injury or illness will be expended to comply with these requirements. This estimate applies to costs for current partially exempt establishments that would be newly required to keep records and to cost savings for establishments that would no longer be required to keep records.

**BUSINESS REPORT:** None

**ALTERNATIVES STATEMENT:** In accordance with Government Code Section 11346.5(a)(13), the Division must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the Division's attention would be more effective in carrying out the purpose for which the action is proposed, as effective and less burdensome to affected private persons than the proposed action, or more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Division invites interested persons to present reasonable alternatives to the proposed amended regulation at the scheduled hearing or during the written comment period.

**CONTACT PERSON:** Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Steve Smith at (916) 263-1943, Cal/OSHA, 2424 Arden Way #495, Sacramento, CA 95825. The designated back-up contact person is Robert Nakamura at (510) 286-7005, Cal/OSHA, 1515 Clay St., Suite 1901, Oakland, CA 94612. In any inquiries or written comments, please identify the action by referencing to Amendment to 8 C.C.R. Section 14300.2

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE:**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of publication of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, the Economic and Fiscal Impact Statement (Form 399), and a copy of the document entitled "Federal Register, Vol. 79, No. 181, pages 56130-56188 (Federal Register). As public comments are received during the rulemaking process, they will be added to the rulemaking file.

In addition, this Notice, Initial Statement of Reasons, proposed text of regulations, and Federal Register may be accessed and downloaded from the Division's website at <http://www.dir.ca.gov/Rulemaking/DIRProposed.html>. To access them, scroll down the list of rulemaking proceedings to find the current rulemaking.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at Cal/OSHA, 2424 Arden Way #495, Sacramento, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday (except for state holidays). Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person

**AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

Upon closure of time for receipt of public comments, the Division may adopt the proposed rulemaking substantially as described above or may modify it if such modifications are sufficiently related to the original text. With the exception of technical, grammatical or other non-substantive changes, if the Division makes any changes to the proposed regulations as a result of the public hearing and public comment received, the full text of such modifications to the proposed rulemaking, with changes clearly indicated, will be made available for public comment 15 days prior to their adoption. Notice of the modified text will be mailed to those persons who submit written or oral comments related to the proposed rulemaking or who request notification of any changes to the proposed rulemaking.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website at <http://www.dir.ca.gov/Rulemaking/DIRProposed.html>. If adopted, the proposed amendment to the regulation will appear in Title 8, California Code of Regulations, Section 14300.2.