

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

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|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R20-5-629 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 23-405(4)
Implementing statute: A.R.S. § 23-410
- 3. The effective date of the rules:**
- The effective date of this final rule package will be the date it is filed with the Secretary of State according to § 41-1032. The new changes to the rule(s) replaces outdated industry classifications by Standard Industrial Classification (SIC) and converts the industry classification to the North American Industry Classification System (NAICS) along with revising requirements for employers to report work-related fatalities, injuries, and illness information to OSHA.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
- Notice of Rulemaking Docket Opening: 21 A.A.R. 2573, October 30, 2015
Notice of Proposed Rulemaking: 21 A.A.R. 2512, October 30, 2015
- 5. The name and address of agency personnel with whom persons may communicate regarding rulemaking:**

Name: Larry Gast, ADOSH Assistant Director
Address: Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ. 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614

E-mail:

Larry.Gast@azdosh.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

Therefore, in order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring State administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, The Industrial Commission is amending R20-5-629, by adopting amendments relating to injury and illness recording and reporting regulations. The amendment to the federal safety standards relation to injury and illness recording and reporting as published in the Federal Register, 79 FR56129-56188, September 18, 2014. The federal final rule became effective on January 1, 2015. The amendment is intended to update Appendix A to subpart B in OSHA's injury and illness recording and reporting regulation (29 CFR 1904). The update replaces outdated industry classifications by Standard Industry Classification (SIC) and converts the industry classification to the North American Industry Classification System (NAICS). The SIC classification system dates back to the 1930's and is no longer used in government statistics. In addition, the final rule revises requirements for employers to report work-related fatalities, injuries, and illness information to OSHA. Specifically, employers are now required to report all work-related inpatient hospitalizations, amputations, and loss of an eye to OSHA within 24 hours of the event. The final rule will likely increase the number of events that employers must report to OSHA.

.7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review or rely on any study relevant to the rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The preliminary summary of the economic, small business and consumer impact:

The Industrial Commission anticipates that the rule change related to incorporating by reference the recent amendments to federal safety standards on injury and illness recording

and reporting will not have a significant economic impact on a substantial number of small entities. Federal OSHA has determined that this rulemaking has net annualized costs nationally of \$9 million, with total annualized new costs of \$20.6 million to employers, total annualized cost savings of \$11.5 million for employers who no longer have to meet certain recordkeeping requirements, and average annualized costs of \$82 per year for the most-affected firms (those newly required to keep records every year). Thus, this rulemaking imposes far less than \$100 million in annual costs on the economy and, consequently, OSHA has determined that this rule is not “economically significant” within the context of Executive Order (E.O.) 12866. OSHA has also determined that this final rule is economically feasible and will not have a significant economic impact on a substantial number of small entities. By contrast, OSHA estimates that the rulemaking will improve access to information about workplace safety and health, with potential benefits that could include:

- Allowing the Agency to identify the workplaces where workers are at greatest risk, in general and/or from specific hazards, and target its compliance assistance and enforcement efforts accordingly.
- Increasing the ability of employers, employees, and employee representatives to identify and abate hazards that pose serious risks to workers at their workplaces.

OSHA stated that the conversion from SIC to NAICS and the revised reporting requirements have substantially different goals and thus different potential benefits. OSHA said it expects the conversion from SIC to NAICS to result in more useful injury and illness data. The SIC system currently in use is obsolete and has not been used by many other data collection entities for years. Converting to NAICS will enable both affected employers and OSHA to achieve consistency and comparability with other data collection efforts conducted by both public and private entities. OSHA reported there was little controversy concerning the concept of converting from SIC to NAICS. However, there is no way to convert from SIC to NAICS without changing in some way the number of establishments required to routinely record injuries and illnesses. This result is inevitable because there is no one-for-one mapping from SIC to NAICS for many industries.

The requirement to report all work-related fatalities, in-patient hospitalizations, amputations, and losses of an eye will likely assure better use of inspection and enforcement resources by targeting those resources to establishments with the most serious hazards.

Having data on establishments that experience significant events will improve inspection targeting. Studies have shown that OSHA inspections can lead to a reduction in the rate of injuries and illnesses, and that the effect is greater where injury and illness rates are higher and where the inspection finds violations that result in a citation. Most studies reviewed by OSHA showed reductions in injuries and illnesses at a given facility only when the inspection uncovered safety and health violations that resulted in citations. A working paper, funded by the RAND Corporation, Haviland (Haviland, et al., 2008), estimated that firms with between 20 and 250 employees experience a 19 to 24 percent reduction in injury rates per year for two years following an inspection that results in a citation.

OSHA reported that these provisions in Part 1904 will increase the amount of injury and illness data recorded on employer records and available for review and collection by OSHA. It is believed that improved data availability will likely result in increased inspections in facilities more likely to have violations that result in citations, which will, in turn, have some positive effect on the rates of injuries and illnesses at those facilities. As a result of these considerations, OSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None

11. A summary of the comments made regarding the rule and the agency response to them:

The Arizona Division of Occupational Safety and Health did not receive any written or oral comments concerning this rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

CFR 1904 Federal Occupational Safety and Health Standards for Recording and Reporting

Occupational Injuries and Illness with Amendments as of January 1, 2015. This incorporation by reference will appear in A.A.C. R20-5-629.

14. Was the rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Recordkeeping, as published in 29 CFR 1904, with amendments as of ~~January 1, 2004.~~ January 1, 2015, incorporated by reference. Copies of the incorporated materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to recordkeeping by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1904 published after ~~January 1, 2004.~~ January 1, 2015.